Missouri Attorney General's Opinions - 1992

Opinion	Date	Topic	Summary
21-92	Apr 6	ADMINISTRATIVE RULES. DEPARTMENT OF REVENUE. SECRETARY OF STATE.	(1) The fiscal note required by Section 536.200, RSMo Supp.1991, and Section 536.205, RSMo 1986, is to only include the estimated cost attributable to the proposed rulemaking and is not to include the estimated cost attributable to the legislation which the proposed rulemaking implements, and (2) compliance with Sections 536.200 and 536.205 is required even if the proposed rulemaking results from a court decision.
34-92	Jan 24	BLIND. DIVISION OF FAMILY SERVICES. SOCIAL SERVICES, DEPARTMENT OF. WORKMENS' COMPENSATION.	(1) Vending facility managers of the Division of Family Services/Bureau for the Blind are employees of the state for workers' compensation purposes; and (2) employees of vending facility managers are employees of the state for workers' compensation purposes.
40-92	Jan 28	FIRE PROTECTION DISTRICTS.	Under Section 321.200, RSMo Supp.1991, and Section 321.220, RSMo Supp.1991, a board of directors of a fire protection district is not authorized to contract with the fire chief for the fire chief to hire, discharge or suspend employees.
45-92	Apr 23	COUNTIES. COUNTY FUNDS. PROSECUTING ATTORNEY. SHERIFFS.	The prosecuting attorney and sheriff of a third class county are not authorized to maintain a bank account for law enforcement purposes separate from the county treasury.
61-92	Feb 21		Opinion letter to Carl M. Koupal, Jr.
63-92	Nov 9		Opinion letter to The Honorable Steve Ehlmann.
65-92	Apr 21		Opinion letter to John J. Jackson.
67-92	July 8	DEPARTMENT OF PUBLIC SAFETY. POLICE. SAFETY BELTS. SEAT BELTS. TRAFFIC LAWS.	(1) An officer may not stop, inspect or detain a motorist solely to determine compliance with Section 307.178.2, RSMo Supp.1991, even if the officer visually observes the motorist appears to not be wearing a seat belt, and (2) if a motorist has been stopped, inspected or detained as a result of a roadblock/checkpoint established for a law enforcement purpose other than to check for seat belt compliance, an officer is empowered to issue a warning or citation if he has probable cause to believe that a motorist is in violation of Section 307.178.
68-92	Jan 17	NATURAL	The first reversion to the general revenue fund of the state pursuant to

		RESOURCES, DEPARTMENT OF. STATE FUNDS.	Section 640.220.2, RSMo Supp.1990, shall be at June 30, 1993, and the amount of such reversion shall be the "unexpended balance in the subaccounts of the natural resources protection fund that exceeds" the collections for the biennium July 1, 1991 to June 30, 1993.
70-92	Aug 11		Opinion letter to Terry R. Rottler.
72-92	Mar 16	CHARTER COUNTIES. COUNTIES. COUNTY SHELTERED WORKSHOPS. COUNTY TAXES. PROPERTY TAX. SHELTERED WORKSHOPS. TAXATION - TAX RATE.	A first class county having a charter form of government and not containing any part of a city of 350,000 inhabitants is not authorized to levy a tax pursuant to Sections 205.971 and 205.972, RSMo Supp.1991, in excess of twenty cents per each one hundred dollars assessed valuation even if such county had a higher tax rate prior to the adoption of the charter.
73-92	Jan 10		Opinion letter to The Honorable Don Steen.
77-92	Mar 16	CITIES, TOWNS AND VILLAGES. CITY EMPLOYEES. CITY OFFICERS-OFFICIALS. SUNSHINE LAW.	For purposes of Section 610.021(3) and (13), RSMo Supp.1991, (1) the elected mayor and elected city council members, whether paid or not paid, are not employees of the city; (2) the city clerk and finance director, who are appointed by the mayor and/or city council and are paid, are employees; and (3) the members of committees and citizen boards, who are appointed by the mayor and/or city council and are not paid, are not employees.
79-92	Jan 10		Opinion letter to The Honorable Thomas P. Stoff.
87-92	June 15	COSTS. COURT COSTS. CRIMINAL COSTS. SHERIFF'S FEES. SHERIFFS.	The $4.00 fee provided in Section 57.290.1, RSMo Supp.1991, “[f]or every trial in a criminal case or confession” is to be assessed in cases involving traffic violations if the violation is a crime as defined in Section 556.016, RSMo 1986, and if the sheriff is officially present in court.
89-92	Jan 24	APPORTIONMENT. REAPPORTIONMENT. SENATORIAL DISTRICTS. SENATORIAL REDISTRICTING. VACANCY. VACANCY IN OFFICE.	If an incumbent state senator vacates office after the filing of the apportionment plan and map but before the end of his term, the election to fill the vacancy is held within the boundaries composing the senatorial district at the time of the next preceding general election.
92-92	Feb 11	COUNTIES. COUNTY SALES TAX. SCHOOLS.	A third class county is not authorized to levy a county sales tax with the revenue from the sales tax to be distributed to school districts.

		TAXATION - COUNTY SALES TAX. TAXATION SALES TAX.	
94-92	Feb 21	CITIES, TOWNS AND VILLAGES. HOUSING AUTHORITY. KANSAS CITY. POPULATION.	Sections 99.132 and 99.134, RSMo Supp.1991, do not now apply to the City of Kansas City.
96-92	Aug 26	BOARD OF REGENTS. COLLEGES. STATE COLLEGES.	The Board of Regents of Central Missouri State University cannot delegate to the president of the institution the authority to appoint or dismiss faculty.
104-92	May 18	COUNTIES. COUNTY BUDGET. COUNTY FUNDS. RECORDER OF DEEDS. RECORDERS' FEES.	(1) The recorders fund authorized under Section 59.319, RSMo Supp.1991, should be maintained as a separate fund by the county treasurer in the county treasury, and (2) the county commission is not authorized to budget less to the county recorder of deeds for record storage, microfilming and preservation than the funds available in the recorders fund.
105-92	Feb 11	CITIES, TOWNS AND VILLAGES. CITY DEPOSITORY. CITY HOSPITAL. CITY TREASURER. HOSPITAL BOARD OF TRUSTEES. HOSPITAL FUNDS. HOSPITAL TRUSTEES. HOSPITALS.	(1) All moneys of a city hospital established pursuant to Sections 96.150 to 96.228, RSMo, generated from taxes, donations and from any other source are to be deposited in the city treasury to the credit of a separate fund established for the facility and (2) the depositary for the facility fund is to be selected by the city in accordance with Sections 95.280 and 95.285, RSMo 1986.
107-92	June 2	INVESTMENT OF SCHOOL MONEYS. INVESTMENTS BY SCHOOL DISTRICTS. SCHOOLS. SCHOOL FUNDS.	Section 165.051, RSMo, as amended by House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 581, 86th General Assembly, Second Regular Session (1992), authorizes a Missouri school district to invest certain surplus funds in bank repurchase agreements as described in Article IV, Section 15, of the Constitution of Missouri and Section 30.260, RSMo Supp.1991.
108-92	May 18	AMBULANCE DISTRICT. INCOMPATIBILITY OF OFFICES. PUBLIC ADMINISTRATOR.	The offices of treasurer of an ambulance district and county public administrator are not incompatible and one person may hold both offices at the same time.

109-92	Mar 5	CITIES, TOWNS AND VILLAGES. KANSAS CITY. LIQUOR. SALE OF INTOXICATING LIQUOR. TAXATION - CITIES, TOWNS AND VILLAGES. TAXATION - CITY SALES TAX. TAXATION - SALES TAX.	Sections 92.325 to 92.340, RSMo Supp.1991, do not authorize the City of Kansas City to impose the convention and tourism tax on taverns which sell only alcoholic beverages.
110-92	May 5	CITIES, TOWNS AND VILLAGES. CITY OFFICERS - OFFICIALS. CONFLICT OF INTEREST. FOURTH CLASS CITIES. INCOMPATIBILITY OF OFFICES.	The mayor of a fourth class city may not collect, in addition to his salary as mayor, an hourly payment for work for the city on government grants; on street projects; supervising park improvements, road improvements and repairs; and supervising improvements on the city's water and sewer facilities.
127-92			Withdrawn
134-92	May 5	BANDS. CITIES, TOWNS AND VILLAGES. CITY BANDS. HANCOCK AMENDMENT. PROPERTY TAX. TAXATION - CITIES, TOWNS AND VILLAGES. TAXATION - TAX RATE.	The City of St. Charles may not impose a band tax pursuant to Section 71.640, RSMo 1986, without voter approval.
135-92			Withdrawn
136-92	June 11		Opinion letter to The Honorable Mike Lybyer.
138-92	Aug 11	ARCHITECTS AND	It would not be a violation of Article VII, Section 6, of the Constitution

		ENGINEERS. COUNTIES. COUNTY COMMISSIONERS. NEPOTISM.	of Missouri for a county commission to contract with an architectural firm in which the son-in-law of the presiding commissioner is a non-equity participating partner.
143-92	May 13		Opinion letter to The Honorable Roy D. Blunt.
147-92	Nov 3		Opinion letter to Thomas E. Mountjoy.
148-92	June 5		Opinion letter to The Honorable Roy D. Blunt.
149-92	June 10		Opinion letter to The Honorable Roy D. Blunt.
151-92	June 29		Opinion letter to The Honorable Dennis Ziegenhorn.
153-92	Dec 30	ASSOCIATE CIRCUIT JUDGES. ELECTION OF JUDGES. ELECTIONS. TERM OF OFFICE.	The associate circuit judges elected in November, 1992, to fill the judgeships created in 1991 under Section 478.320, RSMo 1986, because of an increase in a county's population serve the unexpired portion of a term ending December 31, 1994.
154-92	June 29		Opinion letter to The Honorable Roy D. Blunt.
155-92	Nov 12	AGRICULTURE. AGRICULTURAL EXTENSION. EXTENSION COUNCIL. UNIVERSITIES. MISSOURI UNIVERSITY.	Section 281.040.2, RSMo Supp.1991, prohibits the charging of a fee for the course of instruction required for individuals to obtain a certified private applicator's license from the Director of the Department of Agriculture or for educational materials needed to successfully complete the course.
161-92	Dec 2	DEPARTMENT OF PUBLIC SAFETY. FINANCIAL RESPONSIBILITY MOTOR VEHICLE LAW. MOTOR VEHICLE RESPONSIBILITY LAW. MOTOR VEHICLES. PEACE OFFICERS. POLICE.	Section 303.024, RSMo, as amended by Senate Substitute for House Substitute for House Bill No. 1574, 86th General Assembly, Second Regular Session (1992), authorizes a law enforcement officer who lawfully stops an operator of a motor vehicle to notify the Director of Revenue if the operator fails to exhibit an insurance identification card but does not authorize the officer to make an arrest and issue a Uniform Complaint and Summons for failure to exhibit an insurance identification card or failure to maintain financial responsibility.
164-92	Dec 31	DRIVING WHILE	Pursuant to Section 211.031, RSMo Supp.1991, a fifteen and one-half

		INTOXICATED. JURISDICTION. JUVENILES. TRAFFIC OFFENSES.	year old who operates a motor vehicle in violation of Section 302.020, RSMo Supp.1991, without a temporary instruction permit as authorized by Section 302.130, RSMo Supp.1991, is not within the exclusive original jurisdiction of the juvenile court, a fifteen and one-half year old charged with a first offense of driving while intoxicated is not within the exclusive original jurisdiction of the juvenile court, and the exception to the exclusive original jurisdiction of the juvenile court for a fifteen and one-half year old who is alleged to have violated a state or municipal traffic ordinance or regulation is not applicable when the charge is leaving the scene of an accident under such circumstances as to constitute a felony.
167-92	Oct 28	BOARD OF PUBLIC WORKS. CITIES, TOWNS AND VILLAGES. CITY BOARD OF PUBLIC WORKS. SCHOOLS. SCHOOL BOARDS.	An election to the school board constitutes the acceptance of "a nomination or appointment for any other office" as the phrase is used in Section 91.470, RSMo 1986.
169-92	Oct 15	CIRCUIT BREAKER LAW. HOMESTEAD. PROPERTY TAX. TAXATION - GENERAL. TAXATION - INCOME TAX.	Pursuant to Section 135.010(1), RSMo, as amended by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1434 & 1490 and Senate Substitute for Senate Bill No. 797, 86th General Assembly, Second Regular Session (1992), veterans of the armed forces of the United States or this state who became one hundred percent disabled as a result of such military service and their spouses are eligible for tax credits provided in Sections 135.010 to 135.030, RSMo, regardless of age.
180-92	Sept 8		Opinion letter to The Honorable George R. Engelbach.
192-92	Dec 2	COUNTIES. COUNTY DEPOSITORIES. COUNTY FUNDS. COUNTY INVESTMENTS. COUNTY TREASURY. INVESTMENT OF COUNTY FUNDS. INVESTMENTS.	A county is not authorized by law to enter into repurchase agreements.
197-92	Dec 31		Opinion letter to The Honorable Roy D. Blunt and James R. Moody.

ADMINISTRATIVE RULES:
DEPARTMENT OF REVENUE:
SECRETARY OF STATE:

(1) The fiscal note required by Section 536.200, RSMo Supp. 1991, and Section 536.205, RSMo 1986, is to only include the estimated cost attributable to the proposed rulemaking and is not to include the estimated cost attributable to the legislation which the proposed rulemaking implements, and (2) compliance with Sections 536.200 and 536.205 is required even if the proposed rulemaking results from a court decision.

April 6, 1992

OPINION NO. 21-92

Raymond T. Wagner, Jr., Director
Department of Revenue
Post Office Box 311
Jefferson City, Missouri 65102

Dear Director Wagner:

This opinion is in response to the following questions submitted by the prior Director of Revenue:

> 1. When regulations are promulgated to implement legislation, does a separate fiscal note need to be prepared for each proposed regulation in satisfaction of the requirements of Sections 536.200 and 536.205, RSMo, or is the cost attributable to the legislation rather than the regulation?
>
> 2. Is an agency required to file fiscal notes pursuant to Sections 536.200 and 536.205 when the rule and/or regulation being promulgated is required pursuant to the decision of a court of competent jurisdiction that changes the manner in which a tax is collected?

Section 536.200, RSMo Supp. 1991, states:

> 536.200 Fiscal note for proposed rules affecting public funds, required when, where filed, contents--failure to file procedure--

publication--effect of failure to publish--first year evaluation, publication.--1. Any state agency filing a notice of proposed rulemaking, as required by section 536.021, wherein the adoption, amendment, or rescission of the rule would require or result in an expenditure of public funds by or a reduction of public revenues for that agency or any other state agency of the state government or any political subdivision thereof including counties, cities, towns, and villages, and school, road, drainage, sewer, water, levee, or any other special purpose district which is estimated to cost more than five hundred dollars in the aggregate to any category of the above, shall at the time of filing the notice with the secretary of state file a fiscal note estimating the cost to each affected agency or to each class of the various political subdivisions to be affected. The fiscal note shall contain a detailed estimated cost of compliance and shall be supported with an affidavit by the director of the department to which the agency belongs that in his opinion the estimate is reasonably accurate. If no fiscal note is filed, the director of the department to which the agency belongs shall file an affidavit which states that the proposed change will cost less than five hundred dollars in the aggregate to all categories listed above.

2. In the event that at the end of the first full fiscal year of implementation of the rule, amendment, or rescission the cost, in the aggregate, has exceeded by ten percent or more the estimated cost in the fiscal note or has exceeded five hundred dollars if an affidavit has been filed stating the proposed change will cost less than five hundred dollars, with cost to be determined by the adopting agency, the original estimated cost together with the actual cost during the first fiscal year shall be published by the adopting agency in the Missouri Register within ninety days after the close of the fiscal year and if the adopting agency fails to publish same, if required by this section, the rule, amendment,

or rescission shall immediately be void and of no further force or effect.

3. The estimated cost in the aggregate shall be published in the Missouri Register contemporary with and adjacent to the notice of proposed rulemaking, and failure to do so shall render any rule promulgated thereunder void and of no force or effect. [Emphasis added.]

Section 536.205, RSMo 1986, states:

536.205. Fiscal notes for proposed rules affecting private persons or entities, required, when, where filed, contents--publication--effect of failure to publish.--1. Any state agency filing a notice of proposed rulemaking, as required by section 536.021, whereby the adoption, amendment, or rescission of the rule would require an expenditure of money by or a reduction in income for any person, firm, corporation, association, partnership, proprietorship or business entity of any kind or character which is estimated to cost more than five hundred dollars in the aggregate, shall at the time of filing the notice with the secretary of state file a fiscal note containing the following information and estimates of cost:

(1) An estimate of the number of persons, firms, corporations, associations, partnerships, proprietorships or business entities of any kind or character by class which would likely be affected by the adoption of the proposed rule, amendment or rescission of a rule;

(2) A classification by types of the business entities in such manner as to give reasonable notice of the number and kind of businesses which would likely be affected;

(3) An estimate in the aggregate as to the cost of compliance with the rule, amendment or rescission of a rule by the affected persons, firms, corporations,

> associations, partnerships, proprietorships or business entities of any kind or character.
>
> 2. The fiscal note shall be published in the Missouri Register contemporary with and adjacent to the notice of proposed rulemaking, and failure to do so shall render any rule promulgated thereunder void and of no force and effect. [Emphasis added.]

Your first question inquires whether the fiscal note required by Sections 536.200 and 536.205 is to include the estimated cost attributable only to the proposed rulemaking or if the fiscal note is to include the estimated cost attributable to the legislation which the proposed rulemaking implements. The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). The language in both sections most relevant to your inquiry has been highlighted above by underlining. Both sections use the language "of the rule" rather than more general language when referring to estimated cost. Therefore, we conclude that the fiscal note required by Sections 536.200 and 536.205 is to only include the estimated cost attributable to the proposed rulemaking and is not to include the estimated cost attributable to the legislation which the proposed rulemaking implements.

In construing a statute it is appropriate to take into consideration statutes involving similar or related subject matter when such statutes shed light upon the meaning of the statute being construed, even though the statutes are found in different chapters and were enacted at different times. Citizens Electric Corporation v. Director of Department of Revenue, 766 S.W.2d 450, 452 (Mo. banc 1989). Section 23.140.1, RSMo 1986, requires that, prior to being acted upon, all legislation, other than appropriation bills, "be submitted to the oversight division of the committee on legislative research for the preparation of a fiscal note". Subsection 3 of that section requires that the fiscal note accompany the bill throughout its course of passage. Interpreting Sections 536.200 and 536.205 to provide the fiscal note required by such sections is to only include the estimated cost attributable to the proposed rulemaking is consistent with Section 23.140 which addresses the estimated cost associated with legislation.

You have also inquired whether an agency is required to file a fiscal note pursuant to Sections 536.200 and 536.205 when

the proposed rulemaking is required as a result of a court decision. Sections 536.200 and 536.205 do not contain any exception for proposed rulemaking resulting from a court decision. Following the plain and ordinary meaning of the statutory language, compliance with Sections 536.200 and 536.205 is required even if the proposed rulemaking results from a court decision.

CONCLUSION

It is the opinion of this office that (1) the fiscal note required by Section 536.200, RSMo Supp. 1991, and Section 536.205, RSMo 1986, is to only include the estimated cost attributable to the proposed rulemaking and is not to include the estimated cost attributable to the legislation which the proposed rulemaking implements, and (2) compliance with Sections 536.200 and 536.205 is required even if the proposed rulemaking results from a court decision.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

BLIND:
DIVISION OF FAMILY SERVICES:
SOCIAL SERVICES, DEPARTMENT OF:
WORKMENS' COMPENSATION:

(1) Vending facility managers of the Division of Family Services/Bureau for the Blind are employees of the state for workers' compensation purposes; and (2) employees of vending facility managers are employees of the state for workers' compensation purposes.

January 24, 1992

OPINION NO. 34-92

James R. Moody, Commissioner
Office of Administration
State Capitol Building, Room 125
Jefferson City, Missouri 65101

Dear Commissioner Moody:

This opinion is in response to your questions asking:

1. Are "Vending Facility Managers" of the Bureau for the Blind "employees" of the State for worker's compensation purposes - thus requiring worker's compensation coverage under the State plan?

2. Are employees of Vending Facility Managers "employees" of the State for worker's compensation purposes - thus requiring worker's compensation coverage under the State plan?

In the statement of facts accompanying your questions you state:

> The Division of Family Services (DFS), through its Bureau for the Blind (BOB), cooperates with the federal government under the Randolph-Sheppard Act, and offers various restaurant/food/snack vending service outlets throughout the State. These vending services are typically located in a government building; are run by a "blind eligible" manager . . .

> and can vary from a simple cigarette stand up to a complete cafeteria/restaurant.
>
> This entire enterprise is commonly called the "Business Enterprise Program" of the Division of Family Services and is administered pursuant to the Randolph-Sheppard Act [P.L. 74-732, as amended by P.L. 83-565 and P.L. 93-516, 20 USC 107 et seq.]; 34 CFR 395; 34 CFR 361.50 . . . ; Section 8.700 et seq. RSMo; and 13 CSR 40-91.010 . . . .
>
> To facilitate operational functioning of the various facilities, DFS/BOB has caused a not-for-profit corporation to be formed called the "Business Opportunities for the Missouri Blind, Inc." (BOMB) which in turn is responsible for the fiscal operations of the facilities. . . .
>
> Typically, DFS/BOB either leases or receives a permit to put a vending service into a building. DFS/BOB trains eligible blind Vending Facility Managers to run the installation . . . , then along with BOMB enters into a contract with that manager for said operation. Said agreements are typically short, but fully incorporate all the above cited laws which are specific and very detailed. . . . DFS will usually be the lessee or licensee/permit holder, for the physical facility involved.

* * *

Section 287.020, RSMo 1986, defines the word "employee" for workers' compensation purposes.

> 287.020. Definitions.--1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. . . .

James R. Moody, Commissioner

* * *

Section 287.030.1(2), RSMo Supp. 1990, includes the State of Missouri as an "employer."

Whether an employer-employee relationship exists under the workers' compensation law is established by proof of two ultimate facts: (1) the claimant was in the service of the employer; and (2) said services were controllable by the employer. Shinuald v. Mound City Yellow Cab Company, 666 S.W.2d 846, 847 (Mo. App. 1984). See also Hill v. 24th Judicial Circuit, 765 S.W.2d 329, 331 (Mo. App. 1989). "The cases hold that while payment of wages is a circumstance which may aid in determining who is the employer, such payment of itself is insufficient to establish that fact. It is merely useful in determining who has the power of control, which latter is the controlling consideration." Ellegood v. Brashear Freight Lines, 162 S.W.2d 628, 634 (St. L. Ct. App. 1942). "[W]hen the evidence shows that a person to whom a service is rendered has a right to control the performance of the person who renders the service, the relationship of employer and employee is essentially established." Miller v. Hirschbach Motor Lines, Inc., 714 S.W.2d 652, 657 (Mo. App. 1986). [Court's emphasis.]

Within this framework, it is necessary to examine the provisions governing operations of vending facilities to determine whether an employer-employee relationship exists between the State of Missouri and the facility managers. Rule 13 CSR 40-91.010 establishes the guidelines for administration of the Business Enterprise Program of the Division of Family Services/Bureau for the Blind [hereinafter referred to as the Bureau] as mandated by the Randolph-Sheppard Act. The Bureau is defined in 13 CSR 40-91.010(2)(D) as "the unit within the Division of Family Services that administers the Business Enterprise Program." The responsibilities of the Bureau are set out in 13 CSR 40-91.010(4). This rule provides:

> (4) Responsibilities of the Bureau. The bureau, as designated by the SLA [state licensing agency], shall carry out the following activities in the administration of the BEP:
>
> (A) The bureau shall establish vending facilities on federal, state or other property. The Randolph-Sheppard Act, as amended through 1974, authorizes the bureau to establish vending facilities on federal

> property. Sections 8.051, RSMo (Cum. Supp. 1990) and 8.700-8.745, RSMo (1986) authorize the bureau to establish vending facilities on state property. The bureau establishes vending facilities on other public or private property at the request of the public or private entity responsible for management of the property;
>
> (B) The bureau shall provide to each manager consultation and advice for developing sales techniques, merchandising and general operating of the vending facility, purchasing procedures, managerial methods or procedures to promote financial success, appearance of vending facility and required reporting procedures;
>
> (C) The bureau may act as liaison between the manager and property management, suppliers and patrons;
>
> * * *

Subsection (8) establishes the procedures used by the Bureau in training vending facility managers. The Bureau provides the cost of training with vocational rehabilitation case service funds. 13 CSR 40-91.010(8)(A). Upon successful completion of training, "the bureau awards to the trainee a Certificate of Training that certifies the person is qualified to be licensed as a vending facility manager". 13 CSR 40-91.010(8)(C)2. If a person licensed as a manager has not participated in the Business Enterprise Program for a period of three years, the state licensing agency may terminate the manager's license. 13 CSR 40-91.010(9)(B). At any time, the Deputy Director of the Bureau can require an evaluation or additional training of active managers if the Bureau determines that a manager is not performing at a satisfactory level. 13 CSR 40-91.010(8)(C)3. The Deputy Director of the Bureau is also authorized to require a comprehensive medical examination, including a psychological examination, to determine the ability of a licensee to continue as a manager. Id. Persons who successfully complete the manager training requirements are licensed by the Bureau. 13 CSR 40-91.010(9).

Pursuant to 13 CSR 40-91.010(11)(E), the Bureau determines the equipment needs and furnishes all equipment for a vending facility. A vending facility manager is not authorized to purchase equipment unless the Bureau has given its prior written

authorization. Id. The Bureau is responsible for maintaining equipment. 13 CSR 40-91.010(11)(E)3. When a vending facility manager becomes aware of the need for repair or replacement, he is required to notify the Bureau. Id. The Bureau then decides whether repair or replacement is needed. The manager is required to pay for any equipment repair that was not authorized by the Bureau. Id.

Rule 13 CSR 40-91.010(11)(J) requires the Bureau to inspect vending facilities at least once every two months. Rule 13 CSR 40-91.010(11)(O)1 authorizes the Bureau and property management to establish the days and hours of operation of a vending facility. The manager cannot subcontract the facility without the Bureau's prior written approval. Id. The manager is required to notify the Bureau of absences due to illness or disability. 13 CSR 40-91.010(11)(O)2. If the facility manager is absent from work for more than thirty days in succession because of an illness, the Bureau is authorized to request all medical information regarding the manager's condition. 13 CSR 40-91.010(11)(O)3. The vending facility manager is required to notify the Bureau of any vacation he intends to take. 13 CSR 40-91.010(11)(O)4.

Rule 13 CSR 40-91.010(11)(Q) requires a vending facility manager to keep daily and weekly records and upon request make these available to the Bureau and to BOMB. 13 CSR 40-91.010(11)(Q)1 and 2. On a monthly basis, BOMB will furnish to the manager a report on the vending facility. This report will include the vending facility sales and expenses and the amount the manager must submit to BOMB for administrative fees, sales taxes and insurance. 13 CSR 40-91.010(11)(Q)3. Rule 13 CSR 40-91.010(16) authorizes the Bureau to suspend or terminate a license and a manager's agreement.

Based on the foregoing, we conclude that the Bureau has the power of control over the vending facility managers and their operations to a sufficient extent to create an employer-employee relationship. In reaching this conclusion, we are aware of the terms of the "Nominee Agreement Between Missouri Division of Family Services, State Licensing Agency under Randolph-Sheppard Act and Business Opportunities for the Missouri Blind, Inc.," a copy of which is attached hereto as "Exhibit A". This agreement sets out the responsibilities of BOMB and the Division of Family Services in administering the Business Enterprise Program. As stated on pages 2 and 3 of the agreement, the Bureau has responsibility for providing supervision and direction to BOMB in the day-to-day performance of BOMB's responsibilities; developing and maintaining business relationships with lessors, building managers, and sources of supply; securing locations and

any licenses or permits for the continued operation of the Business Enterprise Program; reporting to BOMB for its consideration any action or plans concerning the business or financial operation of the Business Enterprise Program; and most importantly, for selecting, placing and transferring qualified, trained managers. Vending facility managers can be terminated only after "a full evidentiary hearing before the Director of the Division of Family Services."

We conclude that the Bureau has responsibility for and control of vending facility managers. While BOMB assists in carrying out the Business Enterprise Program, its role lacks sufficient control for it to be deemed the employer of a vending facility manager. Therefore, in answer to your first question, we conclude the vending facility managers of the Bureau are employees of the state for workers' compensation purposes.[1]

Your second question asks whether employees of vending facility managers are also "employees" of the state for workers' compensation purposes. Rule 13 CSR 40-91.010(11)(C) provides that a vending facility manager may consult with the Bureau regarding the number of employees the manager will hire. Rule 13 CSR 40-91.010(11)(C)2 provides:

> 2. Subject to applicable laws, regulations and this rule, the manager shall make all personnel decisions,

---

[1]We note that pursuant to 13 CSR 40-91.010(11)(K):

> The nominee [BOMB], with consultation from the executive committee and as directed by the bureau, shall obtain product liability, general liability and Worker's Compensation insurance for all vending facilities. The nominee shall include on each manager's monthly report a billing for the manager's proportionate share of the premium. The manager shall participate in the insurance program and shall pay to the nominee [BOMB] the amount included on the monthly report. [Emphasis added.]

The purchase of insurance by BOMB does not affect our conclusion because of the control of the vending facility managers by the Bureau.

> including hiring and termination, employee wages, benefits and working conditions.

In Hawkins v. Missouri State Employees' Retirement System, 487 S.W.2d 580 (Mo. App. 1972), the Court of Appeals faced a similar question when it was asked to determine if court reporters were state employees entitled to participate in the Missouri State Employees' Retirement System. The court opined:

> [T]he Court Reporter is an "officer of the court" and for purposes of present analysis stands in the same relationship to the State as the judge of the court who appointed him. The law of Missouri is now settled that circuit judges "'are judges of the State of Missouri and not merely judges of the circuit in which they are elected or appointed'". [Citation omitted.] Since the circuit judge is an officer or employee of the State, rather than of the County in which his court is located, so also it must follow that the Court Reporter appointed by him and who devotes his time exclusively to the circuit judge is also a "state employee".

Id., 487 S.W.2d at 582.

Based on the Hawkins decision, we conclude that employees of vending facility managers must also be considered state employees for workers' compensation purposes.

CONCLUSION

It is the opinion of this office that (1) vending facility managers of the Division of Family Services/Bureau for the Blind are employees of the state for workers' compensation purposes; and (2) employees of vending facility managers are employees of the state for workers' compensation purposes.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Attachment

NOMINEE AGREEMENT
BETWEEN
MISSOURI DIVISION OF FAMILY SERVICES, STATE LICENSING AGENCY
UNDER RANDOLPH-SHEPPARD ACT
AND
BUSINESS OPPORTUNITIES FOR THE MISSOURI BLIND, INC.

This agreement entered into this 5th day of December, 19 83, by and between the Missouri Division of Family Services, State Licensing Agency, hereinafter referred to as the SLA, and Business Opportunities for the Missouri Blind, Inc., hereinafter referred to as the Nominee, a nonprofit corporation organized and operating under the law of Missouri with headquarters at Jefferson City, Missouri.

WITNESSETH:

WHEREAS, the SLA has been designated by the United States Department of Education, as the Missouri State Licensing Agency under the Randolph-Sheppard Act and has under that designation and the law of the State, primary authority and full responsibility for the administration and operation of all phases of the Randolph-Sheppard vending facility program hereinafter referred to as the B.E.P.; and

WHEREAS, the SLA desires to perform certain of its functions in the administration of the Randolph-Sheppard vending facility program by means of services and facilities that can be provided by the Nominee; and

WHEREAS, the Nominee has the expertise and the capacity to perform the certain functions in the administration of the Randolph-Sheppard vending facility program in the State which the SLA desires the Nominee to undertake; and

WHEREAS, the Nominee is willing to undertake the performance of the said certain functions; and

WHEREAS, it is found and deemed to be in the interest of the economical and efficient administration of the Randolph-Sheppard vending facility program in the State for the Nominee to perform the said certain functions;

NOW, THEREFORE, in consideration of the premises, it is mutually agreed as follows:

The Nominee shall:

A. Collect and promptly deposit in designated banks an administrative fee as specified in 13 CSR 40-91.010 based on the net profit from direct sales and receipts from vending machine commissions and disburse these "set aside funds" as defined in 20 USCA, Section 107b, and regulations duly promulgated thereunder as directed by SLA for the following purposes: a fair minimum return program, maintenance and replacement of equipment, management services, purchase of new equipment, retirement fund, health insurance, sick leave,and vacation pay. No other set aside funds will be collected except as specified in this agreement.

B. Maintain records which accurately reflect all transactions made by the corporation and agrees that its books and records reflecting all transactions shall be subject to such audits as the SLA may direct.

C. Perform other duties required by the Randolph-Sheppard Act.

D. Inasmuch as the right, title, and interest of the State Agency to program assets are vested in the Business Opportunities for the Missouri Blind, Inc., the corporation agrees to hold such right, title, and interest only as the Nominee of the State Agency and take such steps as may be necessary to defend and maintain the State Agency's paramount right, title, and interest to such assets.

The SLA shall:

A. Provide supervision and direction to Nominee office personnel in the day-to-day performance of the Nominee's responsibilities as herein defined and provide inservice training for such personnel.

B. Develop and maintain satisfactory business relationships with lessors, building managers, and sources of supply,

C. Secure locations and any licenses or permits necessary for the continued operation of the Business Enterprise Program.

D. Report to the Nominee, for its consideration, any action or plans concerning the business or financial operation of the B.E.P.

E. Shall select, place, and transfer qualified, trained managers. These managers shall be terminated only after being provided the opportunity for a full evidentiary hearing before the Director of the Division of Family Services, as provided under the SLA rules and regulations.

This agreement shall be in effect to the end of the State of Missouri's fiscal year in which it is executed. Thereafter, it will be automatically renewed for one year intervals unless it is terminated by either party after a six month's written notice to the other party, provided that satisfactory financial settlement has been made for outstanding indebtedness to either party.

If upon termination of this agreement the Nominee, or the SLA, no longer desires to participate in the Randolph-Sheppard vending facility program or a program of similar nature, the assets of the Nominee shall revert as provided in the Nominee Constitution and By-Laws for use by the Nominee as stated therein.

Missouri Division of Family Services

by: Joseph J. O'Hara
State Agency Director

Missouri Department of Social Services

by: Barbara Ann
Director

Business Opportunities for the Missouri Blind, Inc.

by: William C. Clinton
President

by: Bill C. Kramer
Secretary

FIRE PROTECTION DISTRICTS: Under Section 321.200, RSMo Supp. 1991, and Section 321.220, RSMo Supp. 1991, a board of directors of a fire protection district is not authorized to contract with the fire chief for the fire chief to hire, discharge or suspend employees.

January 28, 1992

OPINION NO. 40-92

The Honorable Carson Ross
Representative, District 49
State Capitol Building, Room 105J
Jefferson City, MO 65101

Dear Representative Ross:

This opinion is in response to your question asking:

> Can a board of directors [of a fire protection district] contract with the fire chief for the management of a fire protection district, which would include hiring, firing, or suspension?

On the opinion request form you submitted, you refer to Sections 321.200 and 321.220, RSMo. Section 321.200, RSMo Supp. 1991, provides in part:

> 321.200. Board meetings, quorum, vacancy--employment, suspension, discharge of employees.--1. . . . The board, acting as a board, shall exercise all powers of the board, without delegation thereof to any other governmental or other body or entity or association, and without delegation thereof to less than a quorum of the board. Agents, employees, engineers, auditors, attorneys, firemen and any other member of the staff of the district may be employed or discharged only by a board which includes at least two directors; but any board of directors may suspend from duty any such person or staff member who willfully and deliberately neglects or

> refuses to perform his or her regular functions. [Emphasis added.]
>
> * * *

Section 321.220, RSMo Supp. 1991, provides in part:

> 321.220. Powers of board--employee pensions--For the purpose of providing fire protection to the property within the district, the district and, on its behalf, the board shall have the following powers, authority and privileges:
>
> * * *
>
> (4) To enter into contracts, franchises and agreements with any person, partnership, association or corporation, public or private, affecting the affairs of the district, including contracts with any municipality, district or state, or the United States of America, and any of their agencies, political subdivisions or instrumentalities, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service relating to the control or prevention of fires, including the installation, operation and maintenance of water supply distribution, fire hydrant and fire alarm systems; provided, that a notice shall be published for bids on all construction or purchase contracts for work or material or both, outside the authority contained in subdivision (9) of this section, involving an expense of ten thousand dollars or more;
>
> * * *

The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in a statute in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). Section 321.200.1, RSMo Supp. 1991, specifically provides that employees of the district "may be employed or

discharged only by a board which includes at least two directors." [Emphasis added.] "The word 'only' is defined as meaning 'alone in its class, sole, single, exclusive, solely, this and no other, nothing else or more.'" State ex rel. Collins v. Donelson, 557 S.W.2d 707, 710 (Mo. App. 1977), quoting Hiner v. Hugh Breeding, Inc., 355 P.2d 549, 551 (Okl. 1960).

By use of the word "only" in Section 321.200.1, RSMo Supp. 1991, the legislature has limited the hiring and discharge of employees of a fire protection district to a board of directors including at least two directors. This is the plain meaning of the statute when the word "only" is used. Therefore, we conclude that the board of directors is not authorized to contract with the fire chief for the fire chief to hire and discharge employees.

In your question, you also inquire about the suspension of employees. Section 321.200.1, RSMo Supp. 1991, provides that "any board of directors may suspend from duty" any of the persons listed in that section who willfully and deliberately neglects or refuses to perform their regular functions. Furthermore, such section provides that the board shall exercise all powers of the board without delegation thereof to any other body or entity or association or to less than a quorum of the board.

In Pearson v. City of Washington, 439 S.W.2d 756 (Mo. 1969), the Court stated:

> Municipal corporations owe their origins to, and derive their powers and rights wholly from the state, and "where the Legislature has authorized a municipality to exercise a power and prescribed the manner of its exercise, the right to exercise the power given in any other manner is necessarily denied."

Id. at 760, quoting State ex rel. City of Blue Springs v. McWilliams, 335 Mo. 816, 74 S.W.2d 363, 365 (1934). A fire protection district is a municipal corporation. See Attorney General Opinion No. 198-90, a copy of which is enclosed, citing Community Fire Protection District of St. Louis County v. Board of Education of Pattonville Consolidated School District R-3, 315 S.W.2d 873, 877 (Mo. App., St.L. 1958). Section 321.200.1, RSMo Supp. 1991, specifically provides for suspension of employees to be within the authority of the board of directors.

The Honorable Carson Ross

On your opinion request form, you direct our attention to Section 321.220(4), RSMo Supp. 1991, which authorizes the board of directors to enter into contracts "affecting the affairs of the district." However, this section provides no specific authority for the board of directors to contract with the fire chief for the fire chief to suspend employees. Section 321.200.1, RSMo Supp. 1991, provides for the suspension of employees to be within the authority of the board and further provides the board shall exercise its powers without delegation thereof. Therefore, we conclude that the board of directors is not authorized by Section 321.220(4), RSMo Supp. 1991, to contract with the fire chief for the fire chief to suspend employees.

CONCLUSION

It is the opinion of this office that under Section 321.200, RSMo Supp. 1991, and Section 321.220, RSMo Supp. 1991, a board of directors of a fire protection district is not authorized to contract with the fire chief for the fire chief to hire, discharge or suspend employees.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 198-90

COUNTIES:
COUNTY FUNDS:
PROSECUTING ATTORNEY:
SHERIFFS:

The prosecuting attorney and sheriff of a third class county are not authorized to maintain a bank account for law enforcement purposes separate from the county treasury.

April 23, 1992

OPINION NO. 45-92

Lisa C. Henderson
Hickory County Prosecuting Attorney
Hickory County Courthouse
Hermitage, Missouri 65668

Dear Ms. Henderson:

This opinion is in response to a question posed by your predecessor in office asking:

> Do the duly elected prosecuting attorney and sheriff of Hickory County[1] have the authority to maintain a law enforcement fund account outside the county treasurer's accounts where the funds in that account were given to the prosecuting attorney and the sheriff specifically to be spent by them for the purposes of law enforcement?

The opinion request we received states that the United States Drug Enforcement Administration has presented checks to the Hickory County prosecuting attorney and sheriff to be used at their discretion solely for law enforcement purposes. The opinion request does not cite--nor have we found--any specific statutory provisions authorizing the county sheriff or prosecuting attorney to establish and maintain a bank account for law enforcement purposes separate from the county treasury.

County officers possess only such powers as have been expressly granted to them by statute or which are necessarily implied from the powers expressly granted to them. See Missouri Attorney General Opinion No. 400, Rabbitt, 1963, a copy of which is enclosed, and the cases cited therein. See also State ex rel. Madden v. Padberg, 101 S.W.2d 1003, 1008 (Mo.

---

[1]We understand Hickory County is a third class county.

1937). Because there is no statutory authorization for the county sheriff or prosecuting attorney to maintain a bank account for law enforcement purposes separate from the county treasury, we conclude they are not authorized to do so.

Section 54.140, RSMo 1986, sets forth certain duties of the county treasurer.

> 54.140. County revenue to be kept separate; warrants, how paid out, violation, penalty.--It shall be the duty of the county treasurer to separate and divide the revenues of such county in his hands and as they come into his hands in compliance with the provision of law; and it shall be his duty to pay out the revenues thus subdivided, on warrants issued by order of the commission, on the respective funds so set apart and subdivided, and not otherwise; and for this purpose the treasurer shall keep a separate account with the county commission of each fund which several funds shall be known and designated as provided by law; and no warrant shall be paid out of any fund other than that upon which it has been drawn by order of the commission as aforesaid. . . .

Section 54.070, RSMo 1986, provides for the county treasurer to be bonded.

The legislature has established certain funds where moneys are turned over to the county treasurer and earmarked for special purposes. For example, Section 56.312, RSMo Supp. 1991, provides:

> 56.312. Fee for collection of delinquent taxes and fees--deposit--purpose--unexpended balance to remain in fund.--1. Notwithstanding the provisions of sections 50.525 to 50.745, RSMo, the one-half of the tax collection fee which is designated for the use of the prosecuting or circuit attorney as provided in section 136.150, RSMo, shall be deposited by the county treasurer into a separate interest-bearing fund to be expended at the direction of the prosecuting attorney as provided in this section. These funds shall not be budgeted by the governing body of the county or the city of St. Louis, and shall be expended

> only upon warrants executed by the circuit or prosecuting attorney, directing the treasurer to issue checks thereon.
>
> 2. The moneys deposited in the fund may be used by the prosecuting or circuit attorney for office supplies, postage, books, training, office equipment, capital outlay, expenses of trial and witness preparation, additional employees for the staff of the prosecuting or circuit attorney, salary supplements for existing employees on the staff of the prosecuting or circuit attorney. [Emphasis added.]
>
> * * *

Other special funds established within the county treasury include, among others, the Prosecuting Attorneys Training Fund (Section 56.765, RSMo 1986) and a law enforcement training fund (Section 590.140, RSMo Supp. 1991).

Section 50.550, RSMo 1986, provides that "[t]he county commission may create other funds as are necessary from time to time." County commissions are authorized to create funds within the county treasury and to receive and expend such money for law enforcement purposes. See Attorney General Opinion No. 42-88, a copy of which is enclosed. As a result, the county commission for Hickory County could establish a fund in the county treasury designated for law enforcement purposes.

CONCLUSION

It is the opinion of this office that the prosecuting attorney and sheriff of a third class county are not authorized to maintain a bank account for law enforcement purposes separate from the county treasury.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 400, Rabbitt, 1963
Opinion No. 42-88

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

February 21, 1992

OPINION LETTER NO. 61-92

Carl M. Koupal, Jr., Director
Department of Economic Development
Truman State Office Building, Room 680
Jefferson City, Missouri 65101

Dear Mr. Koupal:

This opinion letter is in response to your questions asking:

1. Would the following job titles qualify as "any title or description" pursuant to section 334.740, RSMo, thus requiring registration?

A. Licensed Respiratory Care Practitioner
B. Certified Respiratory Care Practitioner
C. Licensed Respiratory Therapist
D. Certified Respiratory Therapist
E. Certified Respiratory Technician
F. Licensed Respiratory Technician
G. Respiratory Therapist
H. Respiratory Technician
I. Cardiopulmonary Therapist
J. Cardiorespiratory Therapist
K. Inhalation Therapist
L. RT
M. Occupational Therapy Aide
N. Occupational Therapy Assistant
O. Occupational Therapist
P. Certified Occupational Therapy Assistant
Q. OT
R. OTR

2. Does a job description which utilizes any title in question 1 (A-R) qualify as ". . . hold himself out to the public by any title or description. . . "?

3. Does an advertisement which utilizes any title in question 1 (A-R) qualify as ". . . hold himself out to the public by any title or description. . ."?

4. If an individual is credentialed [by the National Board for Respiratory Care] as a CRTT [Certified Respiratory Therapy Technician] or RRT [Registered Respiratory Therapist], would that person be required to register with the department based on these credentials?

5. If an individual represents himself/herself as a CRTT or RRT and provides respiratory therapy services, as defined in section 334.735.9, RSMo, would that person be required to register with the department?

6. If an individual teaches or instructs students on providing respiratory therapy services or occupational therapy services, is the teacher or instructor required to register?

Along with your questions, you state:

In registering respiratory care practitioners and occupational therapists pursuant to sections 334.735 - 334.748, RSMo, the department must designate a certifying entity (see section 334.737.4, RSMo), and the applicant must provide proof of certification or registration by the certifying entities designated by the department (see section 334.738, RSMo).

Throughout this opinion request and for the sake of clarity, the following assumptions are made: 1) the certifying entity has been designated and; 2) the applicant has been credentialed by the certifying entity.

The certifying entity for respiratory care practitioners is the National Board for Respiratory Care, which provides the credentialing of the Certified Respiratory

> Therapy Technician (CRTT); Registered Respiratory Therapist (RRT); and the Certified Pulmonary Function Technologist (CPFT). These designations, CRTT, RRT and CPFT are federally registered service marks of the National Board for Respiratory Care.

Sections 334.735 to 334.748, RSMo Supp. 1991, relating to the registration of occupational therapists, physician assistants and respiratory care practitioners were enacted as Conference Committee Substitute for House Substitute for Senate Bill No. 217, 85th General Assembly, First Regular Session (1989).

Section 334.740, RSMo Supp. 1991, provides:

> 334.740. Title of registered profession--used only by registered persons--service may be performed without registration--when--violation, penalty.--1. No person shall hold himself out to the public by any title or description including the words registered occupational therapist, registered physician assistant, or registered respiratory care practitioner unless he is duly registered under the provisions of sections 334.735 to 334.748, if for that profession a certifying entity has been recognized by the department.
>
> 2. Nothing in sections 334.735 to 334.748 shall be construed as prohibiting any individual whether registered pursuant to sections 334.735 to 334.748 or not from providing the services of occupational therapist, physician assistant, or respiratory care practitioner.
>
> 3. Nothing in sections 334.735 to 334.748 shall be construed as prohibiting credentialed assistants from providing services under the supervision of the same health care professional who is registered in accordance with sections 334.735 to 334.748.
>
> 4. Any person found guilty of violating any provision of subsections 1 to

> 3 of this section is guilty of an infraction and upon conviction thereof shall be punished as provided by law. For purposes of this subsection, the maximum fine for a violation hereunder shall be one thousand dollars.

Section 334.735, RSMo Supp. 1991, provides the following definitions:

> 334.735. Definitions.--As used in sections 334.735 to 334.748, the following terms mean:
>
> * * *
>
> (6) "Occupational therapist", one engaged in the use of purposeful activity with individuals who are limited in their ability to function by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, poverty and cultural differences or the aging process in order to maximize independence, prevent disability and maintain health. The practice encompasses evaluation, treatment and consultation. Specific occupational therapy services include: teaching daily living skills; developing perceptual motor skills and sensory integrative functioning; developing vocational and prevocational capacities; designing, fabricating, or applying selected orthotic and prosthetic devices or selective adaptive equipment; specifically designed manual, creative, prevocational activities and exercises to enhance functional performance; administering and interpreting tests such as manual muscle and range of motion; and adaptive environments for the handicapped. The services may be provided individually, in groups, or through social systems;
>
> * * *
>
> (9) "Respiratory care practitioner", one engaged in the therapeutic and diagnostic use of medical gases,

> administering apparatus, humidification and aerosols, administering of drugs and medications to the cardiorespiratory systems under protocols established by the supervising physician, ventilatory assistance and ventilatory control, postural drainage, percussion, vibration, and breathing exercises, cardiopulmonary rehabilitation, cardiopulmonary resuscitation and maintenance of natural airways, as well as the insertion and maintenance of artificial airways. The practice of respiratory care shall also include specific testing techniques employed in respiratory therapy to assist in diagnosis, monitoring, treatment and research; including, but not limited to measurements of ventilatory volumes, pressures and flows, specimen collection of blood and other materials, pulmonary function, testing and hemodynamic and other related physiological monitoring of the cardiopulmonary systems. The practice of respiratory care is not limited to the hospital setting;
>
> * * *

Legislative intent should be determined from the language used, considering words in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). Section 334.740.2, RSMo Supp. 1991, provides that the legislature did not intend registration under Sections 334.735 to 334.748, RSMo Supp. 1991, to be a prerequisite for one to provide the services of an occupational therapist, physician assistant or respiratory care practitioner. However, Section 334.740.1, RSMo Supp. 1991, does prohibit a person not registered under the provisions of Sections 334.735 to 334.748, RSMo Supp. 1991, from using "any title or description including the words registered occupational therapist . . . or registered respiratory care practitioner. . . ." [Emphasis added.] Therefore, any person using a title or job description stating he or she is a "registered occupational therapist" or a "registered respiratory care practitioner" would be required to register.

None of the titles listed in your first question use the word "registered." Based on the plain meaning of the language of Section 334.740.1, RSMo Supp. 1991, we conclude registration

is not required of a person using the titles listed in your first question.[1]

Because of our answer to your first question, we conclude in answer to your second and third questions that job descriptions or advertisements using the titles listed in your first question would not require registration under Section 334.740, RSMo Supp. 1991.

Your next question asks whether an individual credentialed by the National Board for Respiratory Care as a Certified Respiratory Therapy Technician or a Registered Respiratory Therapist is required to register with the Department of Economic Development.

Section 334.738, RSMo Supp. 1991, provides in part:

> 334.738. Certification, application, form, fee, not refundable--requirements certificate issued, when--destroyed certificate replacement, fee.--1. Each person desiring a certificate of registration under sections 334.735 to 334.748 shall make application to the department upon such forms and in such manner as may be prescribed by the department and shall pay the required application fee as set by the department. The application fee shall cover the cost of issuing the certificate and shall not be refundable. Each application shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing the same, subject to the penalties of making a false declaration or affidavit. Such application shall include proof of

---

[1] In many other statutes, the legislature has provided a more expansive list of titles for professions that cannot be used unless the individual is licensed or registered with the State. See Section 326.021, RSMo 1986; 333.021.2, RSMo 1986; 334.610, RSMo Supp. 1991; 335.076, RSMo 1986; 337.505, RSMo Supp. 1991; 338.260, RSMo Supp. 1991; and 345.075, RSMo 1986.

> certification or registration by a certifying entity, date the certification or registration process was completed with the certifying entity, the name of the certifying entity, any identification numbers and any other information necessary for the department to verify the certification or registration.
>
> 2. The department, upon approval of the application from an applicant, shall issue a certificate of registration to such applicant. [Emphasis added.]

* * *

A "certifying entity" is defined as "the nongovernmental agency or association which certifies or registers individuals who have completed academic and training requirements." Section 334.735(4), RSMo Supp. 1991. In your statement of facts accompanying your question, you indicate that the National Board for Respiratory Care is the certifying entity for respiratory care practitioners.

Section 334.738.1, RSMo Supp. 1991, requires a person desiring a certificate of registration from the Department of Economic Development to submit proof of certification by a certifying entity. In the case of one wanting a certificate of registration in the field of respiratory therapy, certification by the National Board for Respiratory Care would be a prerequisite. However, the fact that a person is credentialed by the National Board for Respiratory Care as a Certified Respiratory Therapy Technician or a Registered Respiratory Therapist would not automatically require registration with the Department of Economic Development.

Your fifth question asks whether an individual representing himself as a Certified Respiratory Therapy Technician or a Registered Respiratory Therapist and providing respiratory therapy services as defined in Section 334.735(9), RSMo Supp. 1991, would be required to register with the Department of Economic Development. We conclude registration would not be required of a person using the title "Certified Respiratory Therapy Technician" for the reasons set out in answer to your first question. A person using the title "Registered Respiratory Therapist" might convey the impression that he or she is registered pursuant to Sections 334.735 to 334.748, RSMo Supp. 1991. While a person merely having this credential bestowed by the National Board for Respiratory Care need not

Carl M. Koupal, Jr., Director

register with the Department, once he holds himself out to the public as a "Registered Respiratory Therapist" registration pursuant to Section 334.740, RSMo Supp. 1991, is required.

Your final question asks whether an individual teaching or instructing students on providing respiratory therapy services or occupational therapy services is required to register with the Department of Economic Development. We find no provisions requiring registration of a teacher or instructor. If such person is not using a title or description for which Section 334.740, RSMo Supp. 1991, requires registration as discussed above, registration is not required.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

November 9, 1992

OPINION LETTER NO. 63-92

The Honorable Steve Ehlmann
Representative, District 19
State Capitol Building, Room 201E
Jefferson City, Missouri 65101

Dear Representative Ehlmann:

This opinion letter is in response to your question asking whether a warrant of arrest issued in St. Louis County by an associate circuit judge of St. Louis County to any peace officer of the State of Missouri can be executed and served in St. Charles County without complying with Section 544.100, RSMo. We assume your question relates to an arrest in St. Charles County by a law enforcement officer who has jurisdiction in St. Charles County.

Section 544.100, RSMo 1986, provides:

> 544.100. Arrest in another county--procedure.--If the person against whom any warrant granted by an associate circuit judge mayor or chief officer of a city or town shall be issued, escape or be in any other county, it shall be the duty of any associate circuit judge authorized to issue a warrant in the county in which such offender may be or is suspected to be, on proof of the handwriting of the associate circuit judge issuing the warrant to endorse his name thereon, and thereupon the offender may be arrested in such county by the officer bringing such warrant, or any officer within the county within which the warrant is so endorsed; and any such warrant may be executed in any county within this state by the officer to whom it is directed, if the clerk of the county commission of the county in which the

> warrant was issued shall endorse upon or annex to the warrant his certificate, with the seal of said commission affixed thereto, that the officer who issued such warrant was at the time an acting officer fully authorized to issue the same, and that his signature thereto is genuine.

In United States v. Rose, 541 F.2d 750 (8th Cir. 1976), the defendant challenged admission in a federal case of a confession he made while in state custody. The defendant was in custody following arrest pursuant to a warrant issued in Randolph County but served in Jackson County. The court stated:

> . . . the warrant was issued and placed in the hands of [Randolph County] Sheriff Price for service. The warrant was to be served in Jackson County; in such circumstances the warrant should have been authenticated by the Clerk of the County Court of Randolph County or it should have been presented prior to service to a magistrate in Jackson County for endorsement. V.A.M.S. § 544.100. Neither of those steps was taken.

Id., 541 F.2d at 754. The court found it unnecessary to rule whether the arrest was pursuant to a valid warrant.

> It is firmly established that peace officers, including Missouri officers, may validly and constitutionally make an arrest without a warrant where probable cause exists to believe that the person to be arrested has committed a felony. . . . Where probable cause for a warrantless arrest exists, the arrest is not invalidated because it was made pursuant to a warrant that turned out to be invalid. [Citations omitted.]

Id., 541 F.2d at 756. The court observed that at the time the defendant was arrested, officers knew several men had been involved in a bank robbery, one man had confessed and implicated the defendant, the defendant had been overheard admitting his involvement, and photographic identification had connected the defendant to the robbery. This knowledge was "sufficient to constitute probable cause for the defendant's arrest." Id.

In State v. Kerr, 531 S.W.2d 536 (Mo. App. 1975), the court stated:

> Case law has established that when a law enforcement agency or officer requests another such agency or officer to arrest a suspect on a particular charge, the arresting agency or officer then has probable cause to sustain the validity of the arrest; that validity of the arrest is determined by existence of probable cause for the arrest in the demanding authority, and invalidity of an existing arrest warrant does not render an arrest invalid when the arresting and demanding authorities otherwise have probable cause for the arrest.

Id., 531 S.W.2d at 540.

You have not provided us with specific pertinent facts. Moreover, it is not appropriate for this office to make a judicial determination as to whether a particular arrest is valid.

However, based on the discussion in United States v. Rose, supra, we conclude that an arrest can be made in St. Charles County based on a warrant issued in St. Louis County without complying with Section 544.100, so long as the circumstances demonstrate probable cause to support an arrest without a warrant.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

April 21, 1992

OPINION LETTER NO. 65-92

John J. Jackson
Marion County Prosecuting Attorney
Post Office Box 976
Hannibal, Missouri 63401

Dear Mr. Jackson:

This opinion letter is in response to your questions asking:

1. Is Marion County required to issue notice to receive proposals to select depositaries for County Funds?

2. If the answer to (1) is yes, what entities are entitled to submit proposals (Savings & Loans or banks or thrifts, etc.); related question: 2(a) please define "banking corporations or associations" as that phrase is used in Section 110.130 RSMo.; related question: 2(b) what geographic limitations, if any, are there on entities being entitled to submit proposals; (because of the statutory language can only entities located at the County Seat submit bids or can all County entities submit bids)?

3. Is the County required to divide the funds into equal parts as apparently required by Section 110.130, RSMo? 3(a) If the answer to (3) is yes, does that mean Marion County must receive

proposals for at least two separate checking accounts, two separate money market accounts, two Certificate of Deposit, etc., OR, does Section 110.130, RSMo. allow for Certificates of Deposit to be "bid" separately, etc. 3(b) Can the County award all of its financial business to one entity or must it be awarded to at least two entities?

4. Can the County restrict those eligible to submit proposals to banking entities in Hannibal only, or to Palmyra only, or to some accounts in Hannibal only and some accounts in Palmyra only?

5. Must the County accept the offer with the highest interest rates, or, may the County consider other factors such as: geographic location of the financial institution (travel expense to do banking business); service charges charged by the financial institution; etc.?

Your first question asks whether Marion County is required to issue notice to receive proposals to select depositaries for county funds. Section 110.130, RSMo 1986, provides in part:

> Section 110.130. Depositaries of county funds--how selected.--1. Subject to the provisions of section 110.030 the county commission of each county in this state, at the May term, in each odd-numbered year, shall receive proposals from banking corporations or associations at the county seat of the county which desire to be selected as the depositaries of the funds of the county. For the purpose of letting the funds the county commission shall, by order of record, divide the funds into not less than two nor more than twelve equal parts, except that in counties of the first class not having a charter form of government, funds shall be divided in not less than two nor more than twenty equal parts, and the bids provided

> for in sections 110.140 and 110.150 may be for one or more of the parts. [Emphasis added.]

* * *

However, Section 110.030, RSMo 1986, authorizes the selection of depositaries without advertising for bids in the following instances:

> 110.030. Advertisement for bids unnecessary, when.--The various statutory provisions in relation to the advertisement for and receipt of bids and the award of the funds to the best bidder or bidders for the whole or any part of any of the public funds of the character referred to in section 110.010 shall be applicable only if and when, at the time of said advertisement and award, it shall be lawful for banking institutions to pay interest upon demand deposits, in which event such applicable statutory provisions shall be complied with; but if, at the time of the advertisement for bids or the receipt of bids or the award of funds, it shall be unlawful for depositary banks and trust companies to pay interest upon such demand deposits, the award or awards of such funds shall be made in each case, without bids and without requiring the payment of any bonus or interest, by the authority or authorities which are by statute empowered to make the awards of such funds upon bids.

In Missouri Attorney General Opinion No. 72, Mallory, 1981, a copy of which is enclosed, this office concluded that "[l]ocal school districts are not required to bid depositaries in accordance with the provisions of Chapter 165, RSMo, because it is 'unlawful' for a banking institution to pay interest upon demand deposits." We stated:

> . . . 12 U.S.C. § 371a, still prohibits a member bank from paying interest on any deposit which is payable on demand. A "demand deposit" is defined as "every deposit which is not a 'time deposit' or 'savings deposit' as defined in 12 C.F.R. § 329.1 and 12 C.F.R. § 217.1.". . . The

> federal regulations on banks and banking further support the statutory prohibition against payment of interest on demand deposits. 12 C.F.R. § 329.2(a); 12 C.F.R. § 217.2(a).

Id., p.2. We have examined the federal provisions relied on in Opinion No. 72, Mallory, 1981, and find that the conclusion remains correct.

Therefore, in answer to your first question, we conclude that Marion County is not required to receive proposals to select depositaries for county funds based on the provisions of Section 110.130, RSMo 1986, because it is "unlawful" for a banking institution to pay interest on demand deposits.

Having concluded in answer to your first question that pursuant to Section 110.030 the various statutory provisions in relation to the advertisement for and receipt of bids and the award of the funds to the best bidder or bidders are not applicable, it is not necessary to address your remaining questions.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 72, Mallory, 1981

DEPARTMENT OF PUBLIC SAFETY:
POLICE:
SAFETY BELTS:
SEAT BELTS:
TRAFFIC LAWS:

(1) An officer may not stop, inspect or detain a motorist solely to determine compliance with Section 307.178.2, RSMo Supp. 1991, even if the officer visually observes the motorist appears to not be wearing a seat belt, and (2) if a motorist has been stopped, inspected or detained as a result of a roadblock/checkpoint established for a law enforcement purpose other than to check for seat belt compliance, an officer is empowered to issue a warning or citation if he has probable cause to believe that a motorist is in violation of Section 307.178.

July 8, 1992

OPINION NO. 67-92

Richard C. Rice, Director
Missouri Department of Public Safety
Post Office Box 749
Jefferson City, Missouri 65102

Dear Director Rice:

This opinion is in response to your questions asking:

> May enforcement action (issuing a citation or warning) to ensure compliance with the provisions of Section 307.178, RSMo, be taken by police officers, based solely on visual observation of noncompliance; the visual observation of such violation occurring, for example, while the officer and the violator(s) are mobile in separate vehicles being operated upon the public highway? The enforcement action taken and visual observation of noncompliance in this scenario would not result from the suspect's being stopped for violation of any other statute or ordinance.
>
> Would the same enforcement action be appropriate when an officer observes a driver or front seat passenger not in compliance with the provisions of Section 307.178, RSMo, upon their approach to a roadblock/checkpoint established for a law

enforcement purpose other than to check for safety belt compliance?

The resolution of both questions depends on the interpretation of certain provisions of Section 307.178, RSMo Supp. 1991. Section 307.178 provides in pertinent part as follows:

> 307.178. Seat belts required for passenger cars--passenger cars defined--exceptions--failure to comply, effect on evidence and damages--penalty.--
>
> 1. As used in this section, the term "passenger car" means every motor vehicle designed for carrying ten persons or less and used for the transportation of persons; except that, the term "passenger car" shall not include motorcycles, motorized bicycles, motor tricycles and trucks.
>
> 2. Each driver, except persons employed by the United States Postal Service while performing duties for that federal agency which require the operator to service postal boxes from their vehicles, or which require frequent entry into and exit from their vehicles, and front seat passenger of a passenger car manufactured after January 1, 1968, operated on a street or highway in this state, shall wear a properly adjusted and fastened safety belt that meets federal National Highway, Transportation and Safety Act requirements; except that, a child less than four years of age shall be protected as required in section 210.104, RSMo. Each driver of a motor vehicle transporting a child four years of age or more, but less than sixteen years of age, in the front seat of the motor vehicle shall secure the child in a properly adjusted and fastened safety belt. <u>No person shall be stopped, inspected, or detained solely to determine compliance with this subsection</u>. The provisions of this section shall not be applicable to persons who have a medical reason for failing to have a seat belt fastened about his or her body.

* * *

> 4. Each person who violates the provisions of subsection 2 of this section after July 1, 1987, shall be guilty of an infraction for which a fine not to exceed ten dollars may be imposed. All other provisions of law and court rules to the contrary notwithstanding, no court costs shall be imposed on any person due to a violation of this section. In no case shall points be assessed against any person, pursuant to section 302.302, RSMo, for a violation of this section. [Emphasis added.]

* * *

The primary rule of statutory construction is to ascertain the intent of the legislature, considering the words in their plain and ordinary meaning. Union Electric Company v. Director of Revenue, 799 S.W.2d 78, 79 (Mo. banc 1990). May Department Stores Company v. Director of Revenue, 791 S.W.2d 388, 389 (Mo. banc 1990). Where the language of the statute is clear and unambiguous, there is no room for statutory construction. May Department Stores Company v. Director of Revenue, supra.

Your first question presumes that an officer can determine noncompliance with Section 307.178 merely by visual observation of a motorist while the officer and motorist are in separate vehicles upon a public highway. That presumption is erroneous.

Section 307.178.2 provides that "[t]he provisions of this section shall not be applicable to persons who have a medical reason for failing to have a seat belt fastened about his or her body." An officer could not determine whether a motorist had a medical reason for failing to have a seat belt fastened about his or her body by mere visual observation without stopping, inspecting or detaining the motorist. Thus, the officer could not determine compliance with the statute without stopping, inspecting or detaining that motorist. Such action would be contrary to the plain language of the statute.

Additionally, certain provisions of Section 307.178 do not apply to any motorist operating a vehicle manufactured prior to January 1, 1968. In certain situations -- when a motorist is driving a car manufactured in late 1967 -- an officer might reasonably believe through visual observation that a motorist is not wearing a seat belt. However, in order to determine

compliance with this statute, the officer would be required to stop, inspect or detain the motorist in order to ascertain the date the vehicle was manufactured. Under the plain language of the statute, such action is not permitted.

Thus, an officer cannot determine noncompliance with this statute by visual observation while the officer and motorist are in separate vehicles upon a public highway. He can possibly determine that a motorist is not wearing a seat belt but would need to stop, inspect or detain the motorist to determine compliance with Section 307.178. Any action taken by an officer to stop, inspect or detain a motorist solely to determine compliance with Section 307.178 would be contrary to the express terms of the statute. Therefore, in answer to your first question, we conclude an officer may not stop, inspect or detain a motorist solely to determine compliance with Section 307.178.2 even if the officer visually observes the motorist appears to not be wearing a seat belt.

Your second question concerns enforcement of Section 307.178 when a motorist approaches a roadblock/checkpoint established for a law enforcement purpose other than to check for seat belt compliance. The resolution of your second question depends again on interpretation of Section 307.178. If a motorist has been stopped, inspected or detained at a roadblock/checkpoint established for a law enforcement purpose other than to check for seat belt compliance, he has not been "stopped, inspected, or detained solely to determine compliance" with Section 307.178. Accordingly, if an officer, who has stopped a motorist for a reason other than to determine compliance with Section 307.178, observes sufficient information to determine that he has probable cause to believe that a violation of Section 307.178 has occurred, it would be permissible for that officer to issue a citation or warning to the motorist.

If the Missouri General Assembly had intended to make a specific exception involving roadblock/checkpoints as applied to Section 307.178, it could have so stated. See e.g. Section 302.510.4, RSMo 1986: "No arrest for alcohol related offenses shall be the basis for suspension or revocation of a driver's license under this section where the arrest was made at a checkpoint or roadblock and there was not probable cause to make the arrest prior to the stopping of the vehicle" (repealed by Conference Committee Substitute for House Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bills Nos. 125 and 341, 86th General Assembly, First Regular Session (1991)).

Richard C. Rice, Director

CONCLUSION

It is the opinion of this office that (1) an officer may not stop, inspect or detain a motorist solely to determine compliance with Section 307.178.2, RSMo Supp. 1991, even if the officer visually observes the motorist appears to not be wearing a seat belt, and (2) if a motorist has been stopped, inspected or detained as a result of a roadblock/checkpoint established for a law enforcement purpose other than to check for seat belt compliance, an officer is empowered to issue a warning or citation if he has probable cause to believe that a motorist is in violation of Section 307.178.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

NATURAL RESOURCES, DEPARTMENT OF: The first reversion to the general revenue fund of the state pursuant to Section 640.220.2, RSMo Supp. 1990, shall be at June 30, 1993, and the amount of such reversion shall be the "unexpended balance in the subaccounts of the natural resources protection fund that exceeds" the collections for the biennium July 1, 1991 to June 30, 1993.
STATE FUNDS:

January 17, 1992

OPINION NO. 68-92

G. Tracy Mehan, III, Director
Department of Natural Resources
Post Office Box 176
Jefferson City, Missouri 65102-0176

Dear Director Mehan:

This opinion is in response to your question asking:

> With regard to Section 640.220.2, RSMo 1990, at the end of the present biennium, which biennium is used to compare the unexpended balance in the subaccounts of the natural resources protection fund for purposes of reversion to the general revenue fund?
>
> The question is, when does the above section go into effect to have the funds lapse into general revenue? The law states that the effective date of the law is July 1, 1991. However, there is not a complete biennium collection period before July 1, 1991. The present biennium ends on June 30, 1993. Hence, there is no basis for the comparison which the statute contemplates. Therefore, it is unclear as to when the provisions should be effective.

Section 640.220, RSMo Supp. 1990, provides:

> 640.220. Natural resources protection fund created--purpose--

> funding--administration--fund relapses into general fund, when.--1. For the purpose of protecting the air, water and land resources of the state, there is hereby created in the state treasury a fund to be known as the "Natural Resources Protection Fund". All funds received from air pollution permit fees, gifts, bequests, donations, or any other moneys so designated shall be paid to the director of revenue and deposited in the state treasury to the credit of an appropriate subaccount of the natural resources protection fund and shall be used for the purposes specified by law. The air pollution permit fee revenues shall be deposited in an appropriate subaccount of the natural resources protection fund and, subject to appropriation by the general assembly, shall be used by the department to carry out the general administration of section 643.075, RSMo. The water pollution permit fee revenues generated through sections 644.052 and 644.053, RSMo, shall be paid to the director of the department of revenue and deposited to the credit of the water pollution permit fee subaccount of the natural resources protection fund and, subject to appropriation by the general assembly, shall be used by the department to carry out the administration of sections 644.006 to 644.141, RSMo.
>
> 2. Effective July 1, 1991, the provisions of section 33.080, RSMo, to the contrary notwithstanding, <u>any unexpended balance in the subaccounts of the natural resources protection fund that exceeds the preceding biennium's collections shall revert to the general revenue fund of the state at the end of each biennium</u>. All interest earned on the natural resources protection funds shall accrue to appropriate subaccounts. [Emphasis added.]

"Biennium" is defined as a "period of two years." Webster's New World Dictionary, Second College Edition. The same source defines "preceding" as "that precedes; going or coming before." Legislative intent should be ascertained from

the language used, considering words in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988).

In considering the words of the statute, such section provides for reversion "to the general revenue fund of the state at the end of each biennium." [Emphasis added.] The statute further provides that the provision is "[e]ffective July 1, 1991." The end of the first biennium after the effective date of the provision is June 30, 1993. Therefore, the first reversion to the general revenue fund pursuant to this provision will be at June 30, 1993.

The amount to revert to the general revenue fund at June 30, 1993 is "any unexpended balance in the subaccounts of the natural resources protection fund that exceeds the preceding biennium's collections." [Emphasis added.] The biennium that precedes the reversion at June 30, 1993 is the biennium commencing July 1, 1991 and ending June 30, 1993. Therefore, the amount of the reversion to the general revenue fund at June 30, 1993 is "any unexpended balance in the subaccounts of the natural resources protection fund that exceeds" the collections for the biennium July 1, 1991 to June 30, 1993.

CONCLUSION

It is the opinion of this office that the first reversion to the general revenue fund of the state pursuant to Section 640.220.2, RSMo Supp. 1990, shall be at June 30, 1993, and the amount of such reversion shall be the "unexpended balance in the subaccounts of the natural resources protection fund that exceeds" the collections for the biennium July 1, 1991 to June 30, 1993.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

August 11, 1992

OPINION LETTER NO. 70-92

Terry R. Rottler
Ste. Genevieve County Prosecuting Attorney
296 Market Street
Ste. Genevieve, Missouri 63670

Dear Mr. Rottler:

This opinion letter is in response to your question asking:

> We seek interpretation of Section 57.430 as recently amended by Senate Bill Number 250 approved by the 86th General Assembly and the Governor. . . . The question to be determined can be expressed in two parts. Number one, does the statute permit the County Commission to pay the sheriffs and their deputies less than 25 cents per mile for the mileage incurred in serving warrants or any other criminal process? Secondly, if that is the case, is the determination of actual and necessary expenses controlled by the itemized statement set forth in subsection 2 of 57.430. Or, in other words, if the deputy or sheriff says these expenses have been incurred and they were necessary for the course of and carrying out of his or her duties, does that make it "actual and necessary"?

Section 57.430, RSMo Supp. 1991, provides in part:

> 57.430. Mileage--maximum amount--computed how--statement to be filed, contents (third and fourth class counties).--1. In addition to the salary provided in sections 57.390 and 57.400, the county commission shall allow the sheriffs

> and their deputies, payable at the end of each month out of the county treasury, actual and necessary expenses for each mile traveled in serving warrants or any other criminal process not to exceed twenty-five cents per mile, and actual expenses not to exceed twenty-five cents per mile for each mile traveled, the maximum amount allowable to be four hundred dollars during any one calendar month in the performance of their official duties in connection with the investigation of persons accused of or convicted of a criminal offense. The county commission may allow an additional two hundred dollars during any one calendar month for these same official duties. When mileage is allowed, it shall be computed from the place where court is usually held, and when court is usually held at one or more places, such mileage shall be computed from the place from which the sheriff or deputy sheriff travels in performing any service. When two or more persons who are summoned, subpoenaed, or served with any process, writ, or notice, in the same action, live in the same general direction, mileage shall be allowed only for summoning, subpoenaing or serving of the most remote. [Emphasis added.]

* * *

We believe your first question is answered by Missouri Attorney General Opinion Letter No. 65-91, a copy of which is enclosed, in which we stated that in addition to Section 57.430, "it is necessary to consider also Sections 50.333.11 and 57.350". Opinion Letter No. 65-91, p. 5.

> Section 50.333.11, RSMo Supp. 199[1], provides in pertinent part: "[o]ther provisions of law notwithstanding, in every instance where an officer or employee of any county is paid a mileage allowance or reimbursement, the county commission shall allow or reimburse such officers or employees out of the county treasury at the highest rate paid to any county officer . . . ." [Emphasis added.] The

> term "notwithstanding" has been held to mean "in spite of" or "regardless of". Missouri Pacific Railroad Company v. Rental Storage & Transit Company, 524 S.W.2d 898, 908 (Mo. App. 1975). The word "every" is all comprehensive. State ex rel. Randolph County v. Walden, 357 Mo. 167, 206 S.W.2d 979, 983 (banc 1947). Therefore, mileage for sheriffs and their deputies for duties relating to criminal cases should be reimbursed "at the highest rate paid to any county officer."

Opinion Letter No. 65-91, pp. 5-6.

Section 57.350, RSMo Supp. 1991, provides:

> 57.350. Mileage expenses allowed.--1. The sheriff may, in an emergency or when he deems it essential for the performance of the official duties of his office, permit the use of personally owned motor vehicles by members of his department, but only when no county owned vehicles are available. When such use is authorized, members of the department using their own motor vehicles shall be reimbursed out of the county treasury twenty-five cents for each mile actually and necessarily traveled in the performance of their official duties as prescribed by subsection 2 of this section. [Emphasis added.]

* * *

In considering all of these statutes together, we conclude the sheriff and his deputies are entitled to mileage reimbursement in the amount of twenty-five cents per mile pursuant to Section 57.430 when personal automobiles are used in criminal law enforcement activities. Section 57.350 provides for mileage reimbursement for duties in civil cases of twenty-five cents per mile. Section 50.333.11 provides for mileage reimbursement for county officers and employees at the highest rate paid to any county officer. Therefore, the mileage reimbursement pursuant to Section 57.430 shall also be at the rate of twenty-five cents per mile.

Terry R. Rottler

Because of our answer to your first question, we do not address your second question.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 65-91

CHARTER COUNTIES:
COUNTIES:
COUNTY SHELTERED WORKSHOPS:
COUNTY TAXES:
PROPERTY TAX:
SHELTERED WORKSHOPS:
TAXATION - TAX RATE:

A first class county having a charter form of government and not containing any part of a city of 350,000 inhabitants is not authorized to levy a tax pursuant to Sections 205.971 and 205.972, RSMo Supp. 1991, in excess of twenty cents per each one hundred dollars assessed valuation even if such county had a higher tax rate prior to the adoption of the charter.

March 16, 1992

OPINION NO. 72-92

The Honorable Joseph Ortwerth
Representative, District 18
State Capitol Building, Room 101-E
Jefferson City, Missouri 65101

Dear Representative Ortwerth:

This opinion is in response to your questions asking:

> May a county of the first-class having a charter form of government and not containing any part of a city of 350,000 inhabitants:
>
> (a) levy a tax to exceed twenty cents per each one hundred dollars assessed valuation?
>
> (b) levy a tax to exceed twenty cents per each one hundred dollars assessed valuation if the county had a higher tax rate prior to the adoption of a charter?

Your opinion request refers to the Handicapped Facilities Board of St. Charles County which was formed pursuant to Sections 205.968, RSMo, et seq. Your apparent concern is whether the taxing authority of St. Charles County provided for in Sections 205.968, RSMo, et seq., will change if St. Charles County becomes a charter county. According to the information you have provided to us, St. Charles County is now a first class county without a charter form of government and does not contain any part of a city of 350,000 inhabitants.

Sections 205.968, RSMo, et seq., were amended by Senate Substitute for Senate Committee Substitute for House Substitute

for House Committee Substitute for House Bill No. 1383, 85th General Assembly, Second Regular Session (1990). Section 205.968, RSMo Supp. 1991, provides in part:

> 205.968. Facilities authorized--persons to be served, limitations, definitions.--1. The governing body of any county or city not within a county in this state may establish a sheltered workshop as defined in section 178.900, RSMo, residence facility, or related services, or any combination of any such sheltered workshops, residence facilities, or related services, for the care or employment, or both, of handicapped persons. The facility may operate at one or more locations in the county or city not within a county.
>
> * * *

Sections 205.971 and 205.972, RSMo Supp. 1991, concerning the tax levy, provide:

> 205.971. Tax levy, approval, use.--The county commission or other governing body of the county, except for a county of the first class having a charter form of government containing in part a city with a population of more than three hundred fifty thousand inhabitants, or a county of the first class having a charter form of government and not containing any part of a city of three hundred fifty thousand inhabitants may, upon approval of a majority of the qualified voters of such county thereon, levy and collect a tax not to exceed four mills per dollar of assessed valuation upon all taxable property within the county for the purpose of establishing and maintaining the county sheltered workshop, residence, facility and/or related services. The county commission or other governing body of a county of the first class having a charter form of government containing in whole or part a city with a population of more than three hundred fifty thousand inhabitants, or a county of the first class having a charter form of government and not containing any part of a city of

> three hundred fifty thousand inhabitants, or a city not within a county may, upon approval of a majority of the qualified voters of such county or city voting thereon, levy and collect a tax not to exceed two mills per dollar of assessed valuation upon all taxable property within such county or city for the purpose of establishing and maintaining the county or city sheltered workshop, residence, facility and/or related services. The tax so levied shall be collected along with other county taxes, or in the case of a city not within a county, with other city taxes, in the manner provided by law. All funds collected for this purpose shall be deposited in a special fund of the facility, and shall be used for no other purpose. Deposits in the fund shall be expended only upon approval of the facility's board of directors. [Emphasis added.]
>
> 205.972. Maximum tax--ballot form.--1. The tax may not be levied to exceed forty cents per each one hundred dollars assessed valuation therefor except for a county of the first class having a charter form of government containing in whole or part a city with a population of more than three hundred fifty thousand inhabitants, or a county of the first class having a charter form of government and not containing any part of a city of three hundred fifty thousand inhabitants, or a city not within a county voting thereon shall not levy a tax to exceed twenty cents per each one hundred dollars assessed valuation therefor. [Emphasis added.]

* * *

The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988).

The Honorable Joseph Ortwerth

Sections 205.971 and 205.972, RSMo Supp. 1991, authorize counties to levy and collect a tax not to exceed "four mills per dollar of assessed valuation" or "forty cents per each one hundred dollars assessed valuation," respectively. However, an exception exists in each of the above statutes for certain counties, including "a county of the first class having a charter form of government and not containing any part of a city of three hundred fifty thousand inhabitants." Counties falling within the exception shall levy a tax not to exceed "two mills per dollar of assessed valuation" or "twenty cents per each one hundred dollars assessed valuation." Sections 205.971 and 205.972, RSMo Supp. 1991, respectively.

Based on the plain language of the foregoing provisions, we conclude that a county of the first class having a charter form of government and not containing any part of a city of 350,000 inhabitants may not levy a tax in excess of twenty cents per each one hundred dollars assessed valuation.

We find no authority that would create a special exception for a first class charter county which had a higher tax rate prior to the adoption of a charter. Once a first class county becomes a charter county as described in Sections 205.971 and 205.972, RSMo Supp. 1991, the requirements of these sections apply. In a similar situation, in Attorney General Opinion No. 62, Milfelt, March 7, 1961, a copy of which is enclosed, this office concluded that Section 137.177, RSMo Amm. 1957, ceased to apply to Jefferson County when Jefferson County changed from third class to second class status.

CONCLUSION

It is the opinion of this office that a first class county having a charter form of government and not containing any part of a city of 350,000 inhabitants is not authorized to levy a tax pursuant to Sections 205.971 and 205.972, RSMo Supp. 1991, in excess of twenty cents per each one hundred dollars assessed valuation even if such county had a higher tax rate prior to the adoption of the charter.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 62, Milfelt, March 7, 1961

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

January 10, 1992

OPINION LETTER NO. 73-92

The Honorable Don Steen
Representative, District 113
State Capitol Building, Room 109G
Jefferson City, Missouri 65101

Dear Representative Steen:

This opinion letter is in response to your questions asking:

> Is Lake of the Ozarks precluded from falling under the authority of Chapter 68, RSMo, regarding Port Authorities, by reason of the passage of Sections 67.783, 67.785, 67.787, 67.788, 67.789, and 67.790, RSMo, regarding Lake Authorities?
>
> If it is not precluded, what requirements are there to have pre-existing commercial and/or industrial facilities prior to formation of a Port Authority?

Along with your questions, you state:

* * *

> City of Lake Ozark is located on the common boundary between the Lake of the Ozarks and the Osage River. There is extensive recreational commercialization of the area. There is no heavy industry and some commercial activities not related to recreation. The Board of Aldermen of the City of Lake Ozark are in favor of the formation of a Port Authority.

The "County Recreational System Act" was enacted by Senate Committee Substitute for Senate Bill No. 776, 85th General

Assembly, Second Regular Session (1990), and is codified as Sections 67.781 to 67.790, RSMo. Section 67.783, RSMo Supp. 1990, provides for the creation of a recreational lake authority.

> 67.783. Recreational lake authority--purpose and powers--exemption--immunity.--1. There is hereby created within any county of the third class having a population of more than ten thousand and less than fifteen thousand and any county of the second class having a population of more than fifty-eight thousand and less than seventy thousand adjacent to such third class county, both counties making up the same judicial circuit, a joint county recreational lake authority, which shall be a body corporate and politic and a political subdivision of this state.
>
> 2. Subject to the limitations in section 67.788, the authority may exercise its powers over the reservoir area encompassing any recreational lake and within five thousand feet of the conservation storage level of any recreational lake constructed or to be constructed by the authority pursuant to sections 67.781 to 67.790.
>
> 3. It shall be the purpose of each authority to promote the general welfare, to promote recreation and to encourage private capital investment through the construction, operation and maintenance of a recreational lake and related improvements to be located jointly in the second class county and the third class county.
>
> 4. The income of the authority and all property at any time owned by the authority shall be exempt from all taxation or any assessments whatsoever to the state or of any political subdivision, municipality or other governmental agency thereof.
>
> 5. No county in which an authority is organized shall be held liable in

> connection with the construction, operation or maintenance of any project or program undertaken pursuant to sections 67.781 to 67.790, including any actions taken by the authority in connection with any project or program undertaken pursuant to sections 67.781 to 67.790. [Emphasis added.]

We understand Lake of the Ozarks is located in Miller, Camden, Morgan and possibly Benton Counties. Miller County is a third class county, Camden County is a second class county, Morgan County is a third class county, and Benton County is a third class county.[1] The population of Camden County, the only second class county of the listed counties, is substantially below the fifty-eight thousand threshold referred to in Section 67.783, RSMo Supp. 1990. Because the counties in which Lake of the Ozarks is located do not meet the specifications set out in Section 67.783, RSMo Supp. 1990, the provisions relating to the creation of recreational lake authorities do not apply to Lake of the Ozarks.

Authorization for a city or county to form a port authority is provided in Section 68.010, RSMo 1986, which states in part:

> 68.010. Cities and counties authorized to form port authorities, when.--1. Every city or county which is situated upon, or adjacent to, or which embraces within its boundaries a navigable waterway, is hereby authorized to form a local port authority, and upon approval of the highways and transportation commission of the state of Missouri, the port authority shall be a political subdivision of this state. In every constitutional charter city not within a county, a local "Port Authority" is created by sections 68.010, 68.015, 68.025, 68.040, 68.045, 68.060 and 68.070 and shall become a political subdivision of this state September 28, 1975.

---

[1]Official Manual, State of Missouri, 1991-1992

2. The highways and transportation commission of the state of Missouri is hereby authorized to accept applications, conduct hearings, and approve or disapprove applications for approval of local or regional port authorities as political subdivisions of this state, as provided herein, but in determining the approval or disapproval of such applications, the highways and transportation commission shall consider the following criteria:

(1) The population of any city and/or county submitting the application;

(2) The desirability and economic feasibility of having more than a single port authority within the same geographic area;

(3) The technical and economic capability of participating cities and/or counties, as well as private interests, to plan and carry out port development within the proposed district;

(4) The amount of actual and potential river traffic that would make use of any facilities developed by a port authority;

(5) The potential economic impact on the immediate area from which the application originates; and

(6) The potential impact on the economic development of the entire state and how the proposed port authority's developmental activities relate to any state plans.

* * *

3. No city shall create a port authority under sections 68.010, 68.015, 68.025, 68.040, 68.045, 68.060 and 68.070 if said city is located within a county that has created a port authority which has received approval as a political subdivision of this state under sections

68.010, 68.015, 68.025, 68.040, 68.045, 68.060 and 68.070.

The criteria for consideration in determining whether an application should be approved does not specify preexisting commercial or industrial facilities.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CITIES, TOWNS AND VILLAGES:
CITY EMPLOYEES:
CITY OFFICERS - OFFICIALS:
SUNSHINE LAW:

For purposes of Section 610.021(3) and (13), RSMo Supp. 1991, (1) the elected mayor and elected city council members, whether paid or not paid, are not employees of the city; (2) the city clerk and finance director, who are appointed by the mayor and/or city council and are paid, are employees; and (3) the members of committees and citizen boards, who are appointed by the mayor and/or city council and are not paid, are not employees.

March 16, 1992

OPINION NO. 77-92

The Honorable Franc Flotron
Senator, District 7
State Capitol Building, Room 427
Jefferson City, Missouri 65101

Dear Senator Flotron:

This opinion is in response to your questions asking:

> 1. As used in Section 610.021(3) and (13), RSMo, does the term "employee" include the following:
>
> (a) Elected Municipal Officials who are paid?
> (b) Elected Municipal Officials who are not paid?
> (c) Appointed Municipal Officials who are paid?
> (d) Appointed Municipal Officials who are not paid?
>
> 2. As used in Section 610.021(13), RSMo, does the term "personnel" include the following:
>
> (a) Elected Municipal Officials who are paid?
> (b) Elected Municipal Officials who are not paid?
> (c) Appointed Municipal Officials who are paid?
> (d) Appointed Municipal Officials who are not paid?

We presume that (1) when you use the phrase "elected municipal officials" in your questions, you are referring to the

elected mayor and elected city council members; (2) when you use the phrase "appointed municipal officials who are paid," you are referring to officials such as the city clerk and city finance director who are appointed by the mayor and/or city council in the charter city about which you are concerned; and (3) when you use the phrase "appointed municipal officials who are not paid," you are referring to members of committees and citizen boards who are appointed by the mayor and/or city council.

Section 610.021, RSMo Supp. 1991, provides in pertinent part:

> 610.021. Closed meetings and records authorized, when--exceptions, parents and guardians to certain scholastic records and public access to certain personnel records.--Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:
>
> * * *
>
> (3) Hiring, firing, disciplining or promoting an employee of a public governmental body. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body must be made available to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice before such decision is made available to the public;
>
> * * *
>
> (13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such; [Emphasis added.]
>
> * * *

The Honorable Franc Flotron

In Attorney General Opinion No. 184-89, a copy of which is enclosed, this office concluded Section 610.021(3), RSMo, does not authorize the governing body of a city to close a meeting when considering appointments of volunteers to citizen boards. In that opinion this office interpreted the word "employee" in Section 610.021(3), RSMo, noting the amendment from a previous similar exception using the word "personnel." We stated:

> In interpreting the earlier language [personnel], this office observed in Attorney General Opinion No. 155, Marshall, 1975, a copy of which is enclosed, that "the 'plain and ordinary meaning' of the word 'personnel' is rather broad." The opinion concluded "that the word 'personnel' as used in the context of § 610.025(4) [RSMo Supp. 1973] refers to officers or employees of a public governmental body who are hired or appointed by, and who are subject to removal by, such governmental body."
>
> However, subsequent interpretations, in addition to the statutory amendment, have narrowed the scope of this exception. In Hawkins v. City of Fayette, 604 S.W.2d 716 (Mo. App. 1980), the Missouri Court of Appeals found a violation of Chapter 610 when a city council meeting was closed to discuss the mayor's salary. The court made a distinction between "general employees" and the mayor, "who was the elected presiding executive officer of the city." Id., 604 S.W.2d at 723. . . .
>
> * * *
>
> The 1987 amendment, by expressly stating the public policy of openness and changing the word "personnel" to "employee," has narrowed the scope of the exception allowing a meeting, record or vote to be closed to the extent it relates to "hiring, firing, disciplining or promoting." A volunteer to a citizen board is not an employee of the public governmental body. Section 610.021(3), does not authorize a public governmental body to close a meeting when considering appointments of volunteers to citizen boards, because such an appointment is not within the specific exception for "hiring,

> firing, disciplining or promoting an employee of a public governmental body."
>
> * * *

Attorney General Opinion No. 184-89 at pages 2-3.

Attorney General Opinion No. 184-89 and the discussion therein appears to resolve your first question. The elected mayor and elected city council members, whether paid or not paid, are not "employees" of the city. The city clerk and finance director, who are appointed by the mayor and/or city council and are paid, are "employees." The members of committees and citizen boards, who are appointed by the mayor and/or city council and are not paid, are not "employees."

Your second question concerns the term "personnel" as used in Section 610.021(13). We note that the word "personnel" appears one time in Section 610.021(13), in a reference to "[i]ndividually identifiable personnel records." [Emphasis added.] In this context, "personnel" is an adjective modifying "records" which "records" pertain to employees or applicants for employment. The exemption set forth in Section 610.021(13) only relates to the individually identifiable personnel records pertaining to employees or applicants for employment. Therefore, the analysis of who is an employee set forth in answer to your first question is equally applicable in determining to whom the exemption provided by Section 610.021(13) applies.

CONCLUSION

It is the opinion of this office that for purposes of Section 610.021(3) and (13), RSMo Supp. 1991, (1) the elected mayor and elected city council members, whether paid or not paid, are not employees of the city; (2) the city clerk and finance director, who are appointed by the mayor and/or city council and are paid, are employees; and (3) the members of committees and citizen boards, who are appointed by the mayor and/or city council and are not paid, are not employees.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 184-89
Opinion No. 155, Marshall, 1975

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

January 10, 1992

OPINION LETTER NO. 79-92

The Honorable Thomas P. Stoff
Representative, District 64
State Capitol Building, Room 300A
Jefferson City, Missouri 65101

Dear Representative Stoff:

This opinion letter is in response to your questions asking:

A. Are volunteer, appointed Commissioners of the Missouri History Museum Subdistrict subject to the requirement to file financial disclosure statements pursuant to Section 105.483 as amended pursuant to Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 262 enacted by the 86th General Assembly?

B. If the Commissioners are subject to the requirement to file financial disclosure statements, may they file such statements pursuant to Section 105.485.4, assuming the subdistrict has truly adopted and filed a resolution establishing its own method of disclosing potential conflicts?

The Missouri History Museum Subdistrict was created pursuant to Section 184.353.3, RSMo, and is defined by Section 184.352(8), RSMo Supp. 1991, as ". . . a political subdistrict which shall provide for the collection, preservation, and exhibition of items relating to the history of the entire state of Missouri and of the Louisiana Purchase Territory. . . ."

The Missouri History Museum Subdistrict is governed by a commission of ten members who serve without compensation. Section 184.358.2, RSMo Supp. 1991. Five commissioners are appointed by the chief executive officer of the City of St. Louis and five are appointed by the chief executive officer of St. Louis County, subject to the advice and consent of the respective legislative bodies of the city or county. Id. From information you have supplied, we understand that the Missouri History Museum Subdistrict has one employee, an internal accountant who serves on a part-time basis. We further assume that the subdistrict does not enter into or approve contracts for the expenditure of state funds.

Section 184.360, RSMo Supp. 1991, establishes the powers and duties of the Missouri History Museum Subdistrict.

> 184.360. Subdistrict's powers--duties.--1. Each respective subdistrict is hereby empowered to own, hold, control, lease, acquire by donation, gift or bequest, purchase, contract, lease, sell, any and all rights in land, buildings, improvements, furnishings, displays, exhibits and programs and any and all other real, personal or mixed property, or to contract with other persons to provide for any and all services for the purposes of the subdistrict.
>
> * * *
>
> 5. Upon the creation of a Missouri history museum subdistrict as provided for in section 184.353, all buildings, property, and facilities which are wholly publicly owned and which are then in the care and custody of the Missouri history museum subdistrict, or of any person providing Missouri history services to the Missouri history museum subdistrict by contract, shall become the property of and vest in the Missouri history museum subdistrict on the date such subdistrict shall be established as provided in section 184.353. Any obligations, duties, rights, privileges of whatever description pertaining to or relating to the maintenance, operation, construction, design, or affairs of such buildings,

> property, and facilities shall be assumed by the Missouri history museum subdistrict.
>
> * * *

Section 105.483, RSMo, was enacted by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1650 and 1565, 85th General Assembly, Second Regular Session (1990), and amended by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 262, 86th General Assembly, First Regular Session (1991). Section 105.483, RSMo Supp. 1991, now provides:

> 105.483. Financial interest statements--who shall file.--Each of the following persons shall be required to file a financial interest statement:
>
> (1) Associate circuit judges, circuit court judges, judges of the courts of appeals and of the supreme court, and candidates for any such office;
>
> (2) Persons holding an elective office of the state, whether by election or appointment, and candidates for elective office;
>
> (3) The principal administrative or deputy officers or assistants serving the governor, lieutenant governor, secretary of state, state treasurer, state auditor and attorney general, which officers shall be designated by the respective elected state official;
>
> (4) The members of each board or commission and the chief executive officer of each public entity created pursuant to the constitution or interstate compact or agreement and the members of each board of regents or curators and the chancellor or president of each state institution of higher education;
>
> (5) The director and each assistant deputy director and the general counsel and the chief purchasing officer of each department, division and agency of state government;

(6) Any official or employee of the state authorized by law to promulgate rules and regulations or authorized by law to vote on the adoption of rules and regulations;

(7) Any member of a board or commission created by interstate compact or agreement, including the executive director and any Missouri resident who is a member of the bi-state development agency created pursuant to sections 70.370 to 70.440, RSMo;

(8) Any board member of a metropolitan sewer district authorized under section 30(a) of article VI of the state constitution;

(9) Any member of a commission appointed or operating pursuant to sections 64.650 to 64.950, RSMo, 67.650 to 67.658, RSMo, or 70.840 to 70.859, RSMo;

(10) The members, the chief executive officer and the chief purchasing officer of each board or commission which enters into or approves contracts for the expenditure of state funds;

(11) Each elected official, the chief administrative officer, the chief purchasing officer and the general counsel, if employed full time, of each political subdivision with an annual operating budget in excess of one million dollars, and each official or employee of a political subdivision who is authorized by the governing body of the political subdivision to promulgate rules and regulations with the force of law or to vote on the adoption of rules and regulations with the force of law; unless the political subdivision adopts an ordinance, order or resolution pursuant to subsection 4 of section 105.485;

(12) Any person identified as a decision-making public servant pursuant to subdivision (6) of section 105.450.

Section 105.450, RSMo Supp. 1991, provides in part:

> 105.450. Definitions.--As used in sections 105.450 to 105.498 and sections 105.955 to 105.963, unless the context clearly requires otherwise, the following terms mean:
>
> * * *
>
> (6) "Decision-making public servant", an official, appointee or employee of the offices or entities delineated in paragraphs (a) to (i) of this subdivision who exercises supervisory authority over the negotiation of contracts, or has the legal authority to adopt or vote on the adoption of rules and regulations with the force of law or exercises primary supervisory responsibility over purchasing decisions and is designated by one of the following officials or entities as a decision-making public servant:
>
> (a) The governing body of the political subdivision with a general operating budget in excess of one million dollars;
>
> (b) A state commission or board;
>
> (c) A department, division, or agency director;
>
> (d) A judge vested with judicial power by article V of the Constitution of the State of Missouri;
>
> (e) Any commission empowered by interstate compact;
>
> (f) A statewide elected official;
>
> (g) The speaker of the house of representatives;
>
> (h) The president pro tem of the senate;

> (i) A board of regents or board of curators of a state institution of higher education;
>
> * * *

Your first question requires a determination of whether the commissioners of the Missouri History Museum Subdistrict are included among any of the persons listed in Section 105.483. In construing the provisions of this statute, legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986).

Section 105.483 lists twelve categories of persons who are required to file a financial interest statement. Based on the plain meaning of the language used, the commissioners of the Missouri History Museum Subdistrict do not appear to fit within the first ten categories.

The first part of Section 105.483(11) requires filing by "[e]ach elected official, the chief administrative officer, the chief purchasing officer and the general counsel, if employed full time, of each political subdivision with an annual operating budget in excess of one million dollars. . . ." Section 105.450(8) defines the term "political subdivision" for purposes of Sections 105.450 to 105.498 and Sections 105.955 to 105.963 to include "any political subdivision of the state, and any special district or subdistrict." Therefore, the Missouri History Museum Subdistrict is a political subdivision for purposes of Section 105.483. You have provided information that the Missouri History Museum Subdistrict has an annual operating budget in excess of one million dollars. However, the subdistrict has no elected officials. You indicate the subdistrict functions without a chief administrative officer, chief purchasing officer or full time general counsel. Therefore, the Missouri History Museum Subdistrict does not meet the initial criteria in Section 105.483(11).

However, Section 105.483(11) also requires a financial interest statement be filed by "each official or employee of a political subdivision who is authorized by the governing body of the political subdivision to promulgate rules and regulations with the force of law or to vote on the adoption of rules and regulations with the force of law;. . . ." Section 184.362, RSMo 1986, provides the following rulemaking authority to the Missouri History Museum Subdistrict:

> 184.362. Facilities to be free, commission rules and regulations, employee

> benefits.--The use and enjoyment of such institutions and places, museums and parks of any and all of the subdistricts established under sections 184.350 to 184.384 shall be forever free and open to the public at such times as may be provided by the reasonable rules and regulations adopted by the respective commissions in order to render the use of the said subdistrict's facilities of the greatest benefit and efficiently to the greatest number. The respective commissions may exclude from the use of the said facilities any and all persons who willfully violate such rules. . . . [Emphasis added.]

Missouri courts have long recognized that "[r]ules duly promulgated pursuant to properly delegated authority have the force and effect of law." Page Western, Inc. v. Community Fire Protection District of St. Louis County, 636 S.W.2d 65, 68 (Mo. banc 1982). A rule usually has the force of law

> where it is addressed to, and is reasonably adapted to, the enforcement of a legislative enactment, the administration of which is confided to the agency making it, where it has a relational basis in legislative, statutory authority, or there is a nexus between the regulation and some delegation of requisite legislative authority, ...

73 C.J.S. Public Administrative Law and Procedure § 97, pp. 627-628. We conclude the commissioners of the Missouri History Museum Subdistrict are authorized to promulgate rules and regulations with the force of law and, therefore, are subject to filing a financial interest statement pursuant to Section 105.483(11).

Section 105.483(12) requires filing of a financial interest statement by "[a]ny person identified as a decision-making public servant" pursuant to Section 105.450(6). Pursuant to Section 105.450(6) a person is a "decision-making public servant" if he (1) is "an official, appointee or employee of the offices or entities delineated in paragraphs (a) to (i)" of subdivision 6 who (2) "exercises supervisory authority over the negotiation of contracts, or has the legal authority to adopt or vote on the adoption of rules and regulations with the force of law or exercises primary supervisory responsibility over

purchasing decisions" (3) "and is designated by one of the [officials or entities listed in paragraphs (a) to (i)] as a decision-making public servant". In order for filing to be required under Section 105.483(12), all three of the criteria set forth above must be met. Based on the information you have provided, there is no indication that the commissioners have designated themselves as "decision-making public servants" and we assume they have not. Therefore, since the third criteria set forth above is not met, the commissioners are not required by Section 105.483(12) to file a financial interest statement.

Having concluded that the commissioners are subject to file a financial interest statement pursuant to Section 105.483(11), it is necessary to address your second question asking if they may file such statements pursuant to Section 105.485.4. Section 105.485.4, RSMo Supp. 1991, provides in part:

> 4. Each official, officer, or employee or candidate of any political subdivision described in subdivision (11) of section 105.483 shall be required to file financial interest statement as required by subsection 2 of this section, unless the political subdivision adopts an ordinance, order or resolution at an open meeting by September fifteenth of the preceding year, which establishes and makes public its own method of disclosing potential conflicts of interest and substantial interests and therefore excludes the political subdivision or district and its officers and employees from the requirements of subsection 2 of this section. . . .

The "local option" provision of Section 105.485.4 expressly applies to individuals described in Section 105.483(11). Because the commissioners of the Missouri History Museum Subdistrict are subject to the filing requirements of Section 105.483(11), they are eligible to file a financial interest statement pursuant to Section 105.485.4 provided the subdistrict adopted an ordinance, order or resolution prior to September 15, 1991, establishing "its own method of disclosing potential conflicts of interest and substantial interests."

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

COSTS:
COURT COSTS:
CRIMINAL COSTS:
SHERIFF'S FEES:
SHERIFFS:

The $4.00 fee provided in Section 57.290.1, RSMo Supp. 1991, "[f]or every trial in a criminal case or confession" is to be assessed in cases involving traffic violations if the violation is a crime as defined in Section 556.016, RSMo 1986, and if the sheriff is officially present in court.

June 15, 1992

OPINION NO. 87-92

Thomas L. Hoeh
Perry County Prosecuting Attorney
17 East St. Joseph Street
Post Office Box 570
Perryville, Missouri 63775

Dear Mr. Hoeh:

This opinion is in response to your question asking:

> Is the county sheriff entitled to a $4.00 fee on every traffic summons issued and prosecuted within his county on which the defendant is tried or to which the defendant pleads guilty?

Along with your question, you state:

> I wish to know if the Sheriff is entitled to the statutorily set fee on traffic tickets prosecuted in Perry County, including such tickets issued by other law enforcement agencies . . . .

Your question is based on a provision in Section 57.290.1, RSMo Supp. 1991, which states:

> . . . sheriffs, county marshals or other officers shall be allowed fees for their services in criminal cases and for all proceedings for contempt or attachment as follows:
>
> * * *

> For every trial in a criminal case or confession . . . . 4.00. [Emphasis added.]

* * *

Legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988).

Section 556.016, RSMo 1986, defines the word "crime."

> 556.016. Classes of crimes.--1. An offense defined by this code [criminal code] or by any other statute of this state, for which a sentence of death or imprisonment is authorized, constitutes a "crime". Crimes are classified as felonies and misdemeanors.
>
> 2. A crime is a "felony" if it is so designated or if persons convicted thereof may be sentenced to death or imprisonment for a term which is in excess of one year.
>
> 3. A crime is a "misdemeanor" if it is so designated or if persons convicted thereof may be sentenced to imprisonment for a term of which the maximum is one year or less.

Section 556.021, RSMo 1986, defines the term "infraction".

> 556.021. Infractions.--1. An offense defined by this code [criminal code] or by any other statute of this state constitutes an "infraction" if it is so designated or if no other sentence than a fine, or fine and forfeiture or other civil penalty is authorized upon conviction.
>
> 2. An infraction does not constitute a crime and conviction of an infraction shall not give rise to any disability or legal disadvantage based on conviction of a crime.

Without discussing each type of traffic violation, we note that numerous statutes specifically designate the violation of traffic provisions as a misdemeanor. See, e.g., Sections

304.009, 304.010, 304.013 and 304.035, RSMo Supp. 1991; and Sections 304.040, 304.044, 304.070, 304.075, 304.110, 304.140, 304.240, and 304.361, RSMo 1986. In addition, the violation of certain traffic provisions, though not designated as a misdemeanor, is subject to a penalty as described in Section 556.016.3, RSMo 1986, and, therefore, would be considered a misdemeanor. See, e.g., Sections 304.026 and 304.570, RSMo 1986.

We note, however, that violation of municipal traffic ordinances is not considered a criminal offense. Missouri courts have long held "that an action for the violation of a city or town ordinance is to be regarded as a civil action for the recovery of a penalty, and that it is not a prosecution for crime." City of Ferguson v. Nelson, 438 S.W.2d 249, 255 (Mo. 1969). See also Frech v. City of Columbia, 693 S.W.2d 813, 814 (Mo. banc 1985).

Our office has addressed questions similar to yours in prior opinions. See, Opinion Letter No. 76, Miller, March 14, 1980; Opinion No. 35, Grossenheider, April 21, 1955; Opinion No. 24, Downs, February 18, 1952; Opinion No. 99, Wright, January 3, 1951; and Opinion No. 39, Herren, August 13, 1947. A copy of each opinion is enclosed. As stated in Opinion Letter No. 76, Miller, March 14, 1980:

> [I]t has been the view of this office that a plea of guilty is the same as a "confession" so that if the sheriff is officially present in court at the time the defendant enters a plea of guilty, the $2.00 [now $4.00] fee would be chargeable. It is also clear from these opinions that if the sheriff is not present in court, such a fee cannot be charged.
>
> Further, it is our view that the fee should be charged for a written plea of guilty, pursuant to a uniform traffic ticket signed by the prosecutor, which is taken by the court when the sheriff is officially present. This fee is collected on behalf of the county. § 57.410, RSMo.

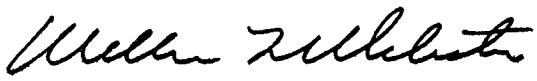
Therefore, the $4.00 fee is to be assessed in cases involving traffic violations if the violation is a crime as defined in

Section 556.016, RSMo 1986, and if the sheriff is officially present in court.[1]

CONCLUSION

It is the opinion of this office that the $4.00 fee provided in Section 57.290.1, RSMo Supp. 1991, "[f]or every trial in a criminal case or confession" is to be assessed in cases involving traffic violations if the violation is a crime as defined in Section 556.016, RSMo 1986, and if the sheriff is officially present in court.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 76, Miller, March 14, 1980
Opinion No. 35, Grossenheider, April 21, 1955
Opinion No. 24, Downs, February 18, 1952
Opinion No. 99, Wright, January 3, 1951
Opinion No. 39, Herren, August 13, 1947

---

[1]We presume your question relates to Perry County, a third class county. Section 57.410, RSMo 1986, provides:

> 57.410. Sheriff to collect fees for county (third and fourth class counties).--In third and fourth class counties the sheriff shall charge and collect for and on behalf of the county every fee accruing to his office which arises out of his duties in connection with the investigation, arrest, prosecution, care, commitment and transportation of persons accused of or convicted of a criminal offense, except such criminal fees as are chargeable to the county.

Therefore, the fee assessed pursuant to Section 57.290.1, RSMo Supp. 1991, is collected on behalf of the county.

APPORTIONMENT:
REAPPORTIONMENT:
SENATORIAL DISTRICTS:
SENATORIAL REDISTRICTING:
VACANCY:
VACANCY IN OFFICE:

If an incumbent state senator vacates office after the filing of the apportionment plan and map but before the end of his term, the election to fill the vacancy is held within the boundaries composing the senatorial district at the time of the next preceding general election.

January 24, 1992

OPINION NO. 89-92

The Honorable Steve Danner
Senator, District 28
State Capitol Building, Room 329
Jefferson City, Missouri 65101

Dear Senator Danner:

This opinion is in response to your question asking:

> If an incumbent state senator vacates office before the end of his term, a special election is necessary to fill the remainder of the term. Is the election held in the existing senate district (that district which elected the senator who is leaving office, i.e., the 1981 district lines), or in the newly drawn senate district (submitted by the appellate court judges in December of 1991)?

Section 21.090, RSMo 1986, provides for notification of the occurrence of a vacancy in either house of the general assembly.

> 21.090. Vacancy, how filled.--If any member elected to either house of the general assembly resigns in the recess thereof, he shall address and transmit his resignation, in writing, to the governor; and when any member resigns during any session, he shall address his resignation, in writing, to the presiding officer of the house of which he is a member, which shall be entered on the journal; in which case, and in all cases of vacancies happening, or being declared, during any session of the

> general assembly, by death, expulsion or otherwise, the presiding officer of the house in which the vacancy happens shall immediately notify the governor thereof.

Where a vacancy occurs in either house of the general assembly, Article III, Section 14, of the Constitution of Missouri and Section 21.110, RSMo 1986, require the governor to issue a writ of election to fill the vacancy.

Sections 21.120 and 21.130, RSMo 1986, establish the procedures for holding an election to fill a vacancy in either house of the general assembly. These sections provide:

> 21.120. Writs of election, how directed.--If any vacancy happens in the senate, for a district composed of more than one county, the writ of election shall be directed to the election authority of the county first named in the report establishing the district; and if the vacancy happens in a senatorial district, which has been divided or altered after the general election next preceding the occurrence of the vacancy, the writ of election shall be directed to the election authority of the county first named in the old district and if any vacancy happens in either house, for any county which has been divided after the general election next preceding the occurrence of the vacancy, the writ of election shall be directed to the election authority of the old county.
>
> 21.130. Duty of election authority on receipt of writ.--The election authority to whom any writ of election is delivered shall cause the election to supply the vacancy to be held within the limits composing the county or district at the time of the next preceding general election, and shall issue its proclamation or notice for holding the election accordingly, and transmit a copy thereof, together with a copy of the writ, to the election authority of each of the counties within which any part of the old county or district lies, who shall cause copies of the notice to be put up, and the election to be held accordingly, in the parts of

> their respective counties as composed a part of the old county or district for which the election is to be held, at the last preceding general election; and the returns shall be made and the certificate of election granted in all things as if no division had taken place. [Emphasis added.]

In Attorney General Opinion No. 80, Webster, 1982, a copy of which is enclosed, this office observed the general rule that "for purposes of defining senatorial districts, the filing of the apportionment plan and map by the Judicial Commission terminates the existence of the old senatorial districts." Id., at 2. We noted, however, that "some exceptions to this general rule exist for such things as filling vacancies before all state senators are elected under the apportionment plan (Section 21.120, RSMo 1978). . . ." Id. [Emphasis in original.] See also Attorney General Opinion No. 82, Smith, August 21, 1952, a copy of which is enclosed, wherein this office concluded only counties comprising an old senatorial district were entitled to vote in a special election for senator to fill the vacancy for the remainder of the term. Based on the provisions in Sections 21.120 and 21.130, RSMo 1986, and the prior opinions of the Attorney General referred to above, we conclude that if an incumbent state senator vacates office after the filing of the apportionment plan and map but before the end of his term, the election to fill the vacancy is held within the boundaries composing the senatorial district at the time of the next preceding general election (the district which elected the senator who is leaving office).

CONCLUSION

It is the opinion of this office that if an incumbent state senator vacates office after the filing of the apportionment plan and map but before the end of his term, the election to fill the vacancy is held within the boundaries composing the senatorial district at the time of the next preceding general election.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 80, Webster, 1982
Opinion No. 82, Smith, August 21, 1952

COUNTIES:
COUNTY SALES TAX:
SCHOOLS:
TAXATION - COUNTY SALES TAX:
TAXATION - SALES TAX:

A third class county is not authorized to levy a county sales tax with the revenue from the sales tax to be distributed to school districts.

February 11, 1992

OPINION NO. 92-92

The Honorable Everett W. Brown
Representative, District 5
State Capitol Building, Room 207B
Jefferson City, Missouri 65101

Dear Representative Brown:

This opinion is in response to your question asking:

> Can a Third Class County levy a sales tax dedicated to the operation of public schools?

The general rule regarding the powers of counties is:

> A county can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; and (3) those essential to the declared objects and purposes of the corporation. Any fair, reasonable doubt concerning the existence of power has been resolved by the courts against the corporation and the power is denied.

American Aberdeen Angus v. Stanton, 762 S.W.2d 501, 503 (Mo. App. 1988), citing Lancaster v. County of Atchison, 352 Mo. 1039, 1044, 180 S.W.2d 706, 708 (banc 1944).

Sections 67.500 to 67.545, RSMo, are known as the "County Sales Tax Act." These sections authorize a county, with approval of the voters of the county, to impose a county sales

tax in conjunction with a property tax reduction. As a general rule, a county may not transfer its funds to another political subdivision unless authorized to do so. In Attorney General Opinion Letter No. 8-84, a copy of which is enclosed, we stated:

> . . . before a second class county may give its funds to a special road district, a statute must exist that expressly or impliedly gives the county this power. . . . The General Assembly has given counties the authority to grant their funds to certain fire protection districts and public library districts. Section 67.250. The General Assembly has given counties no such power . . . with regard to road districts. . . .

Id. at 2. We find no authorization for the county to transfer the revenue from the county sales tax to school districts. Therefore, we conclude a third class county is not authorized to transfer the revenue from the county sales tax levied pursuant to Sections 67.500 to 67.545, RSMo, to school districts.

Certain statutes authorize specified counties to levy a sales tax and distribute the proceeds to other political subdivisions. For example, Section 67.547, RSMo Supp. 1991, authorizes a "first class county having a charter form of government and having a population of nine hundred thousand or more" to distribute five-eighths of the proceeds of an additional county sales tax to the "cities, towns and villages and the unincorporated area of the county. . . ." Section 67.548, RSMo Supp. 1991, authorizes "any first or second class county not having a charter form of government, which contains all or any part of a city with a population of greater than four hundred thousand inhabitants" to impose, with voter approval, an additional sales tax which may be used to

> (1) Reduce or eliminate the county general fund levy, the special road and bridge levy, or the park levy; and
>
> (2) Grant county sales tax revenues to cities, towns and villages and to special road districts organized pursuant to chapter 233, RSMo.

Certain other statutes authorize specified counties to impose a sales tax for specific purposes. See, for example, Sections 67.550 to 67.594, RSMo. Such proposals are submitted to the

voters seeking authorization for a sales tax to be imposed with the funds to be used for a specific enumerated purpose. A review of these sections reveals no authorization for a third class county to levy a sales tax to benefit the operation of public schools. We conclude there is no statute which authorizes a third class county to levy a sales tax with the revenue from the sales tax to be distributed to school districts.

In the absence of any statutory provision authorizing a third class county to levy a sales tax to be distributed to school districts, we conclude a third class county may not levy such a tax.

CONCLUSION

It is the opinion of this office that a third class county is not authorized to levy a county sales tax with the revenue from the sales tax to be distributed to school districts.

Very truly yours.

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 8-84

CITIES, TOWNS AND VILLAGES:
HOUSING AUTHORITY:
KANSAS CITY:
POPULATION:

Sections 99.132 and 99.134, RSMo Supp. 1991, do not now apply to the City of Kansas City.

February 21, 1992

OPINION NO. 94-92

The Honorable Sandra D. Kauffman
Representative, District 46
State Capitol Building, Room 105H
Jefferson City, Missouri 65101

Dear Representative Kauffman:

This opinion is in response to your question asking:

> Do 99.132 and 99.134, RSMo (1990 H.B. 1510) apply to the City of Kansas City, Missouri?

Sections 99.132 and 99.134, RSMo Supp. 1991, were enacted by Senate Substitute for House Committee Substitute for House Bill No. 1510, 85th General Assembly, Second Regular Session (1990). Section 99.132 provides in part:

> 99.132. Violations of city property maintenance code, liability--construction of new units (Kansas City).--1. The provisions of this section shall apply to housing authorities of any city with a population of more than four hundred fifty thousand inhabitants which is located in more than one county. [Emphasis added.]

* * *

Section 99.134 provides in part:

> 99.134. Commissioners of housing authority--membership--terms (Kansas City).--Beginning April 1, 1991, the provisions of this section shall apply to housing authorities of any city with a population of more than four hundred fifty thousand inhabitants which is located in more than one county. . . . [Emphasis added.]

Section 1.100, RSMo 1986, explains how population is to be determined.

> 1.100. Population, how determined--effective date of census--loss or gain in population for certain purposes, effect of.--1. The population of any political subdivision of the state for the purpose of representation or other matters including the ascertainment of the salary of any county officer for any year or for the amount of fees he may retain or the amount he is allowed to pay for deputies and assistants is determined on the basis of the last previous decennial census of the United States. For the purposes of this section the effective date of the 1960 decennial census of the United States is July 1, 1961, and the effective date of each succeeding decennial census of the United States is July first of each tenth year after 1961; except that for the purposes of ascertaining the salary of any county officer for any year or for the amount of fees he may retain or the amount he is allowed to pay for deputies and assistants the effective date of the 1960 decennial census of the United States is January 1, 1961, and the effective date of each succeeding decennial census is January first of each tenth year after 1961.
>
> 2. Any law which is limited in its operation to counties, cities or other political subdivisions having a specified population or a specified assessed valuation shall be deemed to include all counties, cities or political subdivisions which thereafter acquire such population or assessed valuation as well as those in that category at the time the law passed. Once a city not located in a county has come under the operation of such a law a subsequent loss of population shall not remove that city from the operation of that law. No person whose compensation is set by a statutory formula, which is based in part on a population factor, shall have his compensation reduced due solely to an increase in the population factor. [Emphasis added.]

Based on Census figures reported in the Official Manual of the State of Missouri 1991-1992, the 1990 population of the City

of Kansas City is 435,146 inhabitants. The 1980 reported population was 448,028.[1] At the time Sections 99.132 and 99.134 were passed, the City of Kansas City had a population of less than 450,000 and the City of Kansas City has not thereafter acquired a population of 450,000.

The captions to Sections 99.132 and 99.134 refer to Kansas City. However, the caption is not part of the statute.

> The caption, however, is not a part of the statute and cannot vary its express terms. Acts passed by the legislature and signed by the governor do not have bold-faced captions. These are added by the reviser of statutes in order to provide a useful tool for readers. State v. Madsen, 772 S.W.2d 656, 661-662 (Mo. banc 1989), cert. denied 110 Sup.Ct. 845 (1990).

Because Sections 99.132 and 99.134 expressly state they apply to housing authorities in a city having a population of more than 450,000 inhabitants and the City of Kansas City did not have that population at the time the statutes were passed and has not thereafter acquired such population, we conclude these provisions do not now apply to the City of Kansas City.

CONCLUSION

It is the opinion of this office that Sections 99.132 and 99.134, RSMo Supp. 1991, do not now apply to the City of Kansas City.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

---

[1]1970 figures show a population of 507,330, while the 1960 population was 475,539. Official Manual of the State of Missouri 1977-1978.

BOARD OF REGENTS: The Board of Regents of Central Missouri
COLLEGES: State University cannot delegate to the
STATE COLLEGES: president of the institution the authority to appoint or dismiss faculty.

August 26, 1992

OPINION NO. 96-92

The Honorable Gene Lang
Representative, District 120
State Capitol Building, Room 109-C
Jefferson City, Missouri 65101

Dear Representative Lang:

This opinion is in response to your question asking:

> May the Board of Regents of a State College or University existing pursuant to Chapter 174 RSMo delegate to the President of such institution the authority to appoint, reappoint and discharge full-time or part-time faculty of such institution?

We understand that your question specifically relates to the Board of Regents of Central Missouri State University.

Section 174.020, RSMo 1986, provides in part that [t]he normal school at Warrensburg, Johnson County, shall hereafter be known as the 'Central Missouri State College'. . . ." Section 174.030, RSMo 1986, provides:

> 174.030. Board authorized to change name--does not grant additional powers or authority.--The board of regents of each state teachers college located in the districts described in subdivisions (1) through (4) of section 174.010 may in its discretion change the name of its college as provided by section 174.020 by eliminating from the name of the institution the words "teachers college" or any of such words and to add the word "university" in lieu of the word "college", and to change the name of the board as provided by section 174.040 by eliminating therefrom the word "teachers" and to add

> thereto the word "university" in lieu of the word "college"; and thereafter the institutions and boards shall have and enjoy the same rights and privileges as are granted to teachers colleges by law, but nothing herein contained shall be construed to grant authority to such institutions to confer postgraduate degrees except those which may be necessary to the training of teachers for the free public schools of the state, or degrees other than those in education and arts and sciences, nor does it grant additional powers or authorities to those institutions or those boards not enjoyed by other colleges or boards whose names are not changed.

Section 174.120, RSMo 1986, provides in part:

> 174.120. College under general control and management of regents.--Each state teachers college shall be under the general control and management of its board of regents, and the board shall possess full power and authority to . . . appoint and dismiss all officers and teachers . . . .

Section 174.090, RSMo 1986, provides in part:

> 174.090. Quorum, what constitutes majority of all members, when necessary.--A majority of the members of the board shall constitute a quorum for the transaction of business, but no appropriation of money nor any contract which shall require any appropriation or disbursement of money, shall be made, nor teacher employed or dismissed, unless a majority of all the members of the board vote for the same.
> (Emphasis added.)

The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in a statute in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988).

Section 174.120 expressly provides that the Board of Regents "shall possess full power and authority" to appoint and dismiss all officers and teachers. Section 174.090 expressly prohibits employment or dismissal of a teacher "unless a majority of all the members of the board vote for the same." We find no provisions authorizing the Board of Regents to delegate this power to the president of the institution.

Furthermore, Section 174.150, RSMo 1986, provides tha before any professor or teacher shall be removed "he shall have an opportunity to make a defense before the board by counsel or otherwise; and be allowed to introduce testimony which shall be heard and determined by the board."

Based on the foregoing statutory provisions and the absence of any authorization for the president of the institution to appoint and dismiss faculty, we conclude the Board of Regents of Central Missouri State University cannot delegate to the president of the institution the authority to appoint or dismiss faculty. The statutes make no distinction between full-time and part-time faculty.

CONCLUSION

It is the opinion of this office that the Board of Regents of Central Missouri State University cannot delegate to the president of the institution the authority to appoint or dismiss faculty.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

COUNTIES:
COUNTY BUDGET:
COUNTY FUNDS:
RECORDER OF DEEDS:
RECORDERS' FEES:

(1) The recorders fund authorized under Section 59.319, RSMo Supp. 1991, should be maintained as a separate fund by the county treasurer in the county treasury, and (2) the county commission is not authorized to budget less to the county recorder of deeds for record storage, microfilming and preservation than the funds available in the recorders fund.

May 18, 1992

OPINION NO. 104-92

The Honorable Steve Danner
Senator, District 28
State Capitol Building, Room 220
Jefferson City, Missouri 65101

Dear Senator Danner:

This opinion is in response to your questions asking:

> 1. Is the recorders fund authorized under Section 59.319, RSMo Supp. 1991, to be held in the county treasury or is the county recorder entitled to have a separate checking account?
>
> 2. Is the county commission authorized to budget less for the county recorder than the funds available in the recorders fund?

Section 59.319, RSMo Supp. 1991, provides in part:

> 59.319. User fee, collection, deposit, distribution, use of--state treasurer, commissioner of administration, secretary of state, duties.--1. A user fee of four dollars shall be charged and collected by every recorder in this state, over and above any other fees required by law, as a condition precedent to the recording of any instrument. The state portion of the fee shall be forwarded

> monthly by each recorder of deeds to the state director of revenue, and the fees so forwarded shall be deposited by the director in the state treasury. Two dollars of such fee shall be retained by the recorder and deposited in a recorders fund and not in county general revenue for record storage, microfilming, and preservation. [Emphasis added.]
>
> * * *

Section 59.319 provides that two dollars of the four dollar fee shall be deposited in a recorders fund. However, this statute contains no express authorization for a county recorder of deeds to establish a checking account for the recorders fund separate from the county treasury.

County officers possess only such powers as have been expressly granted to them by statute or which are necessarily implied from the powers expressly granted to them. See Opinion No. 400, Rabbitt, 1963 and Opinion No. 45-92. A copy of each is enclosed. Because there is no authority for the county recorder of deeds to maintain a checking account for the recorders fund separate from the county treasury, we conclude the recorder is not authorized to do so.

Section 54.140, RSMo 1986, sets forth certain duties of the county treasurer.

> 54.140. County revenue to be kept separate; warrants, how paid out, violation, penalty.--It shall be the duty of the county treasurer to separate and divide the revenues of such county in his hands and as they come into his hands in compliance with the provision of law; and it shall be his duty to pay out the revenues thus subdivided, on warrants issued by order of the commission, on the respective funds so set apart and subdivided, and not otherwise; and for this purpose the treasurer shall keep a separate account with the county commission of each fund which several funds shall be known and designated as provided by law; and no warrant shall be paid out of any fund other than that upon which it has been drawn by order of the commission as aforesaid. . . .

Section 54.070, RSMo 1986, provides for the county treasurer to be bonded.

In the absence of any statutory authority for a county recorder of deeds to maintain a checking account for the recorders fund separate from the county treasury, we conclude in answer to your first question that the recorders fund provided for in Section 59.319 should be maintained as a separate fund by the county treasurer in the county treasury.

Your second question asks whether the county commission is authorized to budget less for the county recorder than the funds available in the recorders fund. Section 59.319 provides that the recorders fund is to be used for "record storage, microfilming, and preservation."

In Attorney General Opinion Letter No. 113-85, a copy of which is enclosed, this office considered whether Section 136.250, RSMo, required the county commission of a third class county to set aside one-half of a twenty percent delinquent tax collection fee in a separate account for the discretionary use of the county prosecuting attorney. Opinion Letter No. 113-85 concluded:

> County funds may be budgeted as a matter of law if a statute or other authority imposes a mandatory, nondiscretionary duty on the county to allocate those funds in a particular manner. State ex rel. Robb v. Poelker, 515 S.W.2d 577, 579 (Mo. banc 1974); Opinion Letter No. 242, Peterson, 1980, copy enclosed. We believe that the one-half of the delinquent tax collection fees designated for use by the prosecuting attorney's office are allocated to the prosecuting attorney's office as a matter of law if such funds are not actually budgeted by the county commission. . . .

Because Section 59.319 expressly provides that two dollars of each four dollar user fee shall be used for record storage, microfilming and preservation, we conclude that the county commission is not authorized to budget less for such purposes than the funds available in the recorders fund. If such funds are not actually budgeted by the county commission, they are budgeted as a matter of law.

CONCLUSION

It is the opinion of this office that (1) the recorders fund authorized under Section 59.319, RSMo Supp. 1991, should be maintained as a separate fund by the county treasurer in the county treasury, and (2) the county commission is not authorized to budget less to the county recorder of deeds for record storage, microfilming and preservation than the funds available in the recorders fund.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 45-92
Opinion Letter No. 113-85
Opinion Letter No. 242, Peterson, 1980
Opinion No. 400, Rabbitt, 1963

CITIES, TOWNS AND VILLAGES:
CITY DEPOSITORY:
CITY HOSPITAL:
CITY TREASURER:
HOSPITAL BOARD OF TRUSTEES:
HOSPITAL FUNDS:
HOSPITAL TRUSTEES:
HOSPITALS:

(1) All moneys of a city hospital established pursuant to Sections 96.150 to 96.228, RSMo, generated from taxes, donations and from any other source are to be deposited in the city treasury to the credit of a separate fund established for the facility and (2) the depositary for the facility fund is to be selected by the city in accordance with Sections 95.280 and 95.285, RSMo 1986.

February 11, 1992

OPINION NO. 105-92

The Honorable Bill Skaggs
Representative, District 34
State Capitol Building, Room 404-A
Jefferson City, Missouri 65101

Dear Representative Skaggs:

This opinion is in response to your questions asking:

> With respect to the funds of a third class city hospital organized and operated under Sections 96.150 - 96.228, RSMo:
>
> (i) is the city treasurer to have custody of a special facility fund in the city treasury comprised of all moneys from taxes, donations and any other source generated by the hospital or may the board of trustees of the hospital establish and maintain a separate account (or accounts) for the deposit and/or investment of this money;
>
> (ii) does the city select the depositary for the facility fund of the hospital pursuant to Section 95.280, RSMo 1986, or may the board of trustees of the hospital independently select the depositary for funds generated by it; and

> (iii) may the board of trustees of such a hospital set up and maintain a special irrevocable trust to which all the funds of the hospital are transferred, the terms of which (a) give control of the trust assets to three trustees who serve a term of five years and are not necessarily members of the board of trustees of the hospital, (b) who may make distribution of principal in their absolute and uncontrolled discretion for payment of capital improvements to the hospital, (c) gives control of the investment of the trust funds to the discretion of the trust company, (d) allows for amendment of the trust on only the unanimous vote of the members of the board present at the meeting considering the amendment, and (e) does not allow for termination of the trust?

Sections 96.150 to 96.228, RSMo, provide for third class cities, upon approval of the voters, to adopt a tax for the establishment and operation of city health care facilities.

Section 96.150, RSMo Supp. 1991, provides:

> 96.150. Submission of question to voters--maximum tax authorized--approval required--tax may be ended--board of trustees, authority to operate or lease hospital.--1. When one hundred voters of any city of the third class shall petition the mayor and council asking that an annual tax as specified in the petition not to exceed fifty cents on each one hundred dollars assessed valuation annually be levied for the establishment, equipping, operating, and maintaining by purchase, lease, construction or otherwise of a health care facility in such city for the care and treatment of the sick, disabled, and infirm persons, the mayor and council shall submit the question to the voters. For all purposes under sections 96.150 to 96.228 each type of facility shall be considered as a separate facility.
>
> 2. The question shall be submitted in substantially the following form:

Shall there be ..... cent tax for ..... (establishment of, equipping, operating and maintaining) a ..... (hospital, nursing home, or convalescent home, etc.) in the city for the care and treatment of the sick, disabled and infirm?

3. If two-thirds of the voters voting on the question shall vote for such tax, the tax shall be levied and collected in like manner as other general taxes of the city and shall be a separate fund established for the facility.

4. The tax shall cease in case the voters in the city shall so determine by a majority vote at any election held on such question. Unless otherwise specified in the proposition approved by the voters, the trustees may continue to operate any such facility under the provisions of sections 96.150 to 96.228.

5. The trustees shall have authority to operate, maintain and manage a hospital and hospital facilities, and to make and enter into contracts, for the use, operation or management of a hospital or hospital facilities; to make and enter into leases of equipment and real property, a hospital or hospital facilities, as lessor or lessee, regardless of the duration of such lease; provided, however, that any lease of substantially all of the hospital, as the term "hospital" is defined in section 197.020, RSMo, wherein the board of trustees is lessor shall be entered into only with the approval of the council; and further to provide rules and regulations for the operation, management or use of a hospital or hospital facilities. Any agreement entered into pursuant to this subsection pertaining to the lease of the "hospital", as herein defined, shall have a definite termination date as negotiated by the parties, but this shall not preclude the trustees from entering into a renewal of the agreement with the same or other parties pertaining to the same or other

> subjects upon such terms and conditions as the parties may agree. [Emphasis added.]

Section 96.190, RSMo 1986, provides:

> 96.190. Board to control expenditures, funds--employ assistants.--The board shall control the expenditures of all moneys collected to the credit of the fund established for such facility and the construction, leasing, equipping, operating and maintaining of the facility and the grounds and other property real and personal belonging to the facility; provided, all moneys from taxes, donations and from any other source shall be deposited in the city treasury to the credit of that facility's fund, and drawn upon by the vouchers of the proper officers of such board. The board shall also employ such help, professional and otherwise, as may be necessary to carry out the spirit and intent of sections 96.150 to 96.220, and all such assistants and employees shall serve at the pleasure of the board. [Emphasis added.]

Section 96.195, RSMo 1986, provides:

> 96.195. Facility funds only to be used--nonliability of city.--All obligations incurred in connection with the construction, leasing, equipping, operating and maintaining of this facility and grounds and other property, real and personal, under control of the board shall be payable only from the fund established for such facility and the assets under control of the board. The city shall not be liable for any such claims or indebtedness except to the extent of the fund established for such facility and the assets under control of the board or as provided pursuant to sections 96.222, 96.224, 96.226, and 96.228. [Emphasis added.]

"A municipality derives its governmental powers from the state and exercises generally only such governmental functions

as are expressly or impliedly granted it by the state." Century 21 - Mabel O. Pettus, Inc. v. City of Jennings, 700 S.W.2d 809, 811 (Mo. banc 1985).

As set out above, Section 96.150 requires the tax for establishment and operation of a city health care facility to "be levied and collected in like manner as other general taxes of the city and shall be a separate fund established for the facility." Section 96.190 requires "all moneys from taxes, donations and from any other source shall be deposited in the city treasury to the credit of that facility's fund, and drawn upon by the vouchers of the proper officers of such board."[1]

In Attorney General Opinion No. 54, Strong, 1977, a copy of which is enclosed, this office was asked whether the Jefferson City Library Board was authorized to establish a fund other than those provided for by Sections 182.200 and 182.260, RSMo. Those provisions, like Section 96.190, required all library moneys to be deposited in the city treasury in special city library funds. Opinion No. 54, supra, concluded that the Jefferson City Library Board had "no authority to establish a fund other than the funds specifically provided for by statute." Id. at 3. [Sections 182.200 and 182.260, RSMo, have been amended since the date of Opinion No. 54, supra.]

For the reasons discussed in Opinion No. 54, supra, we conclude in answer to your first question that all moneys from taxes, donations and any other source generated by the city

---

[1]Section 96.210, RSMo 1986, provides:

> 96.210. Bequests, donations--board to be special trustees.--Any person making bequests or donations to such facility shall have the right to vest the title to the real estate or personal property so bequeathed or donated in the board and to be held and controlled by the board, and to all such property the board shall be held to be special trustees.

Based on the information you provided along with your opinion request, we understand the funds about which you are concerned were accumulated from the operation of the hospital. Therefore, we need not consider a situation where a person making a bequest or donation has exercised the rights granted by Section 96.210.

hospital are to be deposited in the city treasury in a separate fund established for the facility, as required by Sections 96.150 and 96.190.

Your second question asks whether the city or the city hospital board of trustees is to select the depositary for the facility fund. As stated in answer to your first question, the moneys of the city hospital are to be deposited in the city treasury.

Section 95.280, RSMo 1986, provides for the depositary of city funds for a third class city:

> 95.280. Depositary for city funds, how selected.--Subject to the provisions of section 110.030, RSMo, the city council, at its regular meetings in July of each year, may receive sealed proposals for the deposit of the city funds from banking institutions doing business within the city that desire to be selected as the depositary of the funds of the city. Notice that bids will be received shall be published by the city clerk not less than one nor more than four weeks before the meeting, in some newspaper published in the city. Any banking institution doing business in the city, desiring to bid, shall deliver to the city clerk, on or before the day of the meeting, a sealed proposal stating the rate percent upon daily balances that the banking institution offers to pay to the city for the privilege of being the depositary of the funds of the city for the year next ensuing the date of the meeting; or, in the event that the selection is made for a less term than one year, as herein provided, then for the time between the date of the bid and the next regular time for the selection of a depositary. It is a misdemeanor for the city clerk or other person to disclose directly or indirectly the amount of any bid to any person before the selection of the depositary.

Section 110.030, RSMo 1986, referred to in Section 95.280, provides that advertising for bids is required only if at the

time of the advertisement for and award of bids it is legal for banking institutions to pay interest upon demand deposits.

Section 95.285, RSMo 1986, provides:

> 95.285. Depositary to deposit securities.--Upon the opening of the sealed proposals submitted, the city council shall select as the depositary of the funds of the city the banking institution offering to pay to the city the largest amount for the privilege; except that the council may reject any or all bids. Within five days after the selection of the depositary, the banking institution selected shall deposit the securities as required by sections 110.010 and 110.020, RSMo. The rights and duties of the parties to the depositary contract are as provided in section 110.010.

Section 110.010, RSMo Supp. 1991, referred to in Section 95.285, requires that the public funds of listed governmental entities deposited in banking institutions "shall be secured by the deposit of securities of the character prescribed by section 30.270, RSMo, for the security of funds deposited by the state treasurer."

We find no statutory provision authorizing the board of trustees of a city hospital to select the depositary for the facility fund of the hospital. Consequently, we conclude that the facility fund, deposited in the city treasury as required by Sections 96.150 and 96.190, is to be deposited in a banking institution selected by the city in accordance with Sections 95.280 and 95.285.

Your third question asks whether the board of trustees of a city hospital may set up and maintain a special irrevocable trust to which all funds of the hospital are transferred. Because of our answers to your first two questions, it is not necessary to address your third question. It is sufficient to reiterate that Sections 96.150 and 96.190 expressly provide that city hospital moneys are to be maintained in a separate fund established for the facility in the city treasury. But cf. Attorney General Opinion No. 234, O'Halloran, 1972, a copy of which is enclosed, discussing statutes which expressly provided authority for a library district to invest funds in the name of the district.

CONCLUSION

It is the opinion of this office that (1) all moneys of a city hospital established pursuant to Sections 96.150 to 96.228, RSMo, generated from taxes, donations and from any other source are to be deposited in the city treasury to the credit of a separate fund established for the facility and (2) the depositary for the facility fund is to be selected by the city in accordance with Sections 95.280 and 95.285, RSMo 1986.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 54, Strong, 1977
Opinion No. 234, O'Halloran, 1972

INVESTMENT OF SCHOOL MONEYS: Section 165.051, RSMo, as
INVESTMENTS BY SCHOOL DISTRICTS: amended by House Committee
SCHOOLS: Substitute for Senate
SCHOOL FUNDS: Substitute for Senate
Committee Substitute for
Senate Bill No. 581, 86th General Assembly, Second Regular Session (1992), authorizes a Missouri school district to invest certain surplus funds in bank repurchase agreements as described in Article IV, Section 15, of the Constitution of Missouri and Section 30.260, RSMo Supp. 1991.

June 2, 1992

OPINION NO. 107-92

The Honorable Ted House
Representative, District 20
State Capitol Building, Room 233A
Jefferson City, Missouri 65101

Dear Representative House:

This opinion is in response to your question asking:

> Is it permissible for a Missouri School District to invest surplus District funds in bank repurchase agreements which are securitized by securities listed at RSMo 30.270?

Section 165.051, RSMo, as amended by House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 581, 86th General Assembly, Second Regular Session (1992), provides:

> 165.051. If any school district has money in the teachers', incidental, building, or debt service fund not needed within a reasonable period of time for the purpose for which the money was received, the school board in the district, if it deems it advisable, may invest the funds in either open time deposits or certificates of deposit secured under the provisions of sections 110.010 and 110.020, RSMo; or in bonds, redeemable at maturity at par, of the state of Missouri, of the United States, or of any wholly owned corporation

> of the United States; or in other short term obligations of the United States; including any instrument permitted by law for the investment of state moneys. No open time deposits shall be made or bonds purchased to mature beyond the date that the funds are needed for the purpose for which they were received by the school district. No funds shall be invested by any district which does not provide a school term of nine months. Interest accruing from the investment of the surplus funds in such deposits or bonds shall be credited to the fund from which the money was invested. [Emphasis added.]

In interpreting Section 165.051, the fundamental rule is to ascertain the intent of the General Assembly from the language used and to give effect to that intent. Brown Group, Inc. v. Administrative Hearing Commission, 649 S.W.2d 874, 881 (Mo. banc 1983). The plain meaning of the statutory language is to be given effect wherever possible. State ex rel. D.M. v. Hoester, 681 S.W.2d 449, 450 (Mo. banc 1984).

Section 165.051 provides that the school board of a school district may invest surplus funds in "open time deposits or certificates of deposit . . . or in bonds, redeemable at maturity at par, of the state of Missouri, of the United States, or of any wholly owned corporation of the United States; or in other short term obligations of the United States; including any instrument permitted by law for the investment of state moneys."

Article IV, Section 15, of the Constitution of Missouri, provides in part ". . . the [state] treasurer may enter into repurchase agreements maturing and becoming payable within ninety days secured by United States Treasury obligations or obligations of United States government agencies or instrumentalities of any maturity, as provided by law. . . ." Section 30.260.4, RSMo Supp. 1991, provides in part:

> 30.260. Time and demand deposits--investments--interest rates.--
>
> * * *
>
> 2. The state treasurer shall place the state moneys which he has determined are not needed for current operations of the state government on time deposit drawing

> interest in banking institutions in this state selected by him and approved by the governor and the state auditor, or place them outright or by repurchase agreement in obligations described in section 15, article IV, Constitution of Missouri, as he in the exercise of his best judgment determines to be in the best overall interest of the people of the state of Missouri, . . .
>
> * * *
>
> 4. The state treasurer may subscribe for or purchase outright or by repurchase agreement obligations of the United States government of the character described in subsection 2 of this section which he, in the exercise of his best judgment, believes to be the best for investment of state moneys at the time. . . . [Emphasis added.]
>
> * * *

Because Section 165.051, as amended, authorizes school districts to invest certain surplus funds in "any instrument permitted by law for the investment of state moneys", and state moneys may be invested in repurchase agreements as described in Article IV, Section 15, of the Constitution of Missouri and Section 30.260, RSMo Supp. 1991, we conclude school districts may invest in such repurchase agreements.

CONCLUSION

It is the opinion of this office that Section 165.051, RSMo, as amended by House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 581, 86th General Assembly, Second Regular Session (1992), authorizes a Missouri school district to invest certain surplus funds in bank repurchase agreements as described in Article IV, Section 15, of the Constitution of Missouri and Section 30.260, RSMo Supp. 1991.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

AMBULANCE DISTRICT:
INCOMPATIBILITY OF OFFICES:
PUBLIC ADMINISTRATOR:

The offices of treasurer of an ambulance district and county public administrator are not incompatible and one person may hold both offices at the same time.

May 18, 1992

OPINION NO. 108-92

Robert A. Johnson
Reynolds County Prosecuting Attorney
Reynolds County Courthouse
Centerville, Missouri 63633

Dear Mr. Johnson:

This opinion is in response to your question asking whether a person may serve as treasurer to the Reynolds County Ambulance Board and also serve as county public administrator. We understand the Reynolds County Ambulance Board to which you refer is the board of directors of the Reynolds County Ambulance District, an ambulance district organized pursuant to The Ambulance District Law, Sections 190.005 to 190.085, RSMo.

It is a settled principle of law that unless the Constitution, a statute, or the common law prohibits the holding of two public offices by one individual, an individual may hold two offices simultaneously. See Missouri Attorney General Opinion No. 16, Mallory, 1974, a copy of which is enclosed. There are no constitutional or statutory prohibitions against the same person serving in the two positions about which you inquire. Therefore, we must address whether the two positions are incompatible under the common law.

The common law rule has been stated in State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636, 639-640 (1896), as follows:

> . . . At common law the only limit to the number of offices one person might hold was that they should be compatible and consistent. The incompatibility does not consist in a physical inability of one person to discharge the duties of the two offices, but there must be some inconsistency in the functions of the

> two,--some conflict in the duties required of the officers, as where one has some supervision of the others, is required to deal with, control, or assist him. It was said by Judge Folger (People v. Green, 58 N.Y. 295): "Where one office is not subordinate to the other, nor the relations of the one to the other such as are inconsistent and repugnant, there is not that 'incompatibility' from which the law declares that the acceptance of the one is the vacation of the other. The force of the word in its application to this matter is that, from the nature and relations to each other of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one towards the incumbent of the other. Thus, a man may not be landlord and tenant of the same premises. He may be landlord of one farm, and tenant of another, though he may not at the same hour be able to do the duty of each relation. The offices must subordinate, one the other, and they must per se have the right to interfere, one with the other, before they are incompatible at common law." . . .

To apply this rule, it is necessary to examine the two offices in question to determine whether there is any inconsistency in the functions of the offices which would render them incompatible.

Section 190.055, RSMo 1986, authorizes the board of directors of an ambulance district to "select a secretary, treasurer and such officers or employees as it deems expedient or necessary for the accomplishment of its corporate objects. The secretary and treasurer need not be members of the board."

The duties of a public administrator are set out principally in Section 473.743, RSMo 1986, which provides that in certain situations "[i]t shall be the duty of the public administrator to take into his charge and custody the estates of all deceased persons, and the person and estates of all minors, and the estates or person and estate of all incapacitated persons in his county. . . ."

Robert A. Johnson

In Attorney General Opinion No. 397, Hyler, 1964, a copy of which is enclosed, this office concluded that a person could simultaneously hold the offices of public administrator and county school board member. Attorney General Opinion No. 358, Paden, 1965, a copy of which is enclosed, concluded that the offices of public administrator and alderman of a fourth class city are not incompatible.

The office of public administrator is concerned with the handling of estates and guardianships. The office of treasurer of an ambulance district is concerned with the financial affairs of the ambulance district. We do not see where a conflict might arise in the holding of these two offices. Therefore, we conclude a person may simultaneously serve as county public administrator and treasurer of an ambulance district.

CONCLUSION

It is the opinion of this office that the offices of treasurer of an ambulance district and county public administrator are not incompatible and one person may hold both offices at the same time.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 16, Mallory, 1974
Opinion No. 397, Hyler, 1964
Opinion No. 358, Paden, 1965

CITIES, TOWNS AND VILLAGES:
KANSAS CITY:
LIQUOR:
SALE OF INTOXICATING LIQUOR:
TAXATION - CITIES, TOWNS AND VILLAGES:
TAXATION - CITY SALES TAX:
TAXATION - SALES TAX:

Sections 92.325 to 92.340, RSMo Supp. 1991, do not authorize the City of Kansas City to impose the convention and tourism tax on taverns which sell only alcoholic beverages.

March 2, 1992

OPINION NO. 109-92

The Honorable Pat Kelley
Representative, District 48
State Capitol Building, Room 116-4
Jefferson City, Missouri 65101

Dear Representative Kelley:

This opinion is in response to your questions asking:

> (1) In your opinion, does Kansas City have the authority to levy the Convention and Tourism tax on taverns which only sell alcoholic beverages?
>
> (2) If "yes" to the first question, then since the City has not levied this tax on taverns before, can the City levy this tax without any change in statute by the state?

Your questions refer to the tax authorized in Sections 92.325 to 92.340, RSMo Supp. 1991, which were enacted by House Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bills Nos. 295 and 312, 85th General Assembly, First Regular Session (1989). Section 92.327 provides in part:

> 92.327. Convention and tourism tax, submitted to voters--rate of tax, deposit in convention tourism fund, purpose.--1. Any city may submit a proposition to the voters of such city:

* * *

> (2) A tax not to exceed one and three-fourths percent of the gross receipts derived from the retail sales of food by every person operating a food establishment.
>
> 2. Such taxes shall be known as the "convention and tourism tax" and when collected shall be deposited by the city treasurer in a separate fund to be known as the "Convention and Tourism Fund." The governing body of the city shall appropriate from the convention and tourism fund as provided in sections 92.325 to 92.340.

Section 92.325, RSMo Supp. 1991, provides the following definitions:

> 92.325. Definitions.--As used in section 92.325 to 92.340, the following terms mean:
>
> (1) "City", a constitutional charter city located in four or more counties;
>
> (2) "Food", all articles commonly used for food or drink, including alcoholic beverages, the provisions of chapter 311, RSMo, notwithstanding;
>
> (3) "Food establishment", any cafe, cafeteria, lunchroom or restaurant which sells food at retail;
>
> * * *
>
> (5) "Gross receipts", the gross receipts from retail sales of food prepared on the premises and delivered to the purchaser (excluding sales tax);
>
> * * *

Section 92.329, RSMo Supp. 1991, authorizes the governing body of a city, as defined in Section 92.325, to submit to the voters a proposal to authorize the city to impose the convention and tourism tax. Under Section 92.322, RSMo Supp. 1991, if a majority of the qualified voters voting on such proposition approve the proposition, the ordinance imposing such tax is

effective. We understand that the City of Kansas City adopted an ordinance imposing the tax, and the tax was approved by the voters on February 6, 1990.

The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988).

Section 92.327.1(2) provides for the tax about which you are concerned to be imposed on the gross receipts derived from the retail sales of food by every person operating a "food establishment." Section 92.325(3) defines a "food establishment" as "any cafe, cafeteria, lunchroom or restaurant which sells food at retail." When statutes enumerate the things or subjects on which they are to operate, they are construed as excluding from their effect all subjects and things not expressly mentioned. DePoortere v. Commercial Credit Corporation, 500 S.W.2d 724, 727 (Mo. App. 1973); Missouri Board of Registration for the Healing Arts v. Levine, 808 S.W.2d 440, 443 (Mo. App. 1991).

The word "tavern" is not included in the definition of a "food establishment." Section 92.325 does not define the words "cafe", "cafeteria", "lunchroom" or "restaurant". The plain and ordinary meaning of these words must be considered.

In City of Flordell Hills v. Hardekopf, 271 S.W.2d 256 (St.L. App. 1954), the court discussed the meaning of the word restaurant:

> A restaurant, according to common understanding, is a public eating place where, as the chief incident to the business carried on, food and drink are prepared and served to be consumed on the premises. In its original conception the term implied a place where meals were served, but in the light of modern usage it would seem that the scope of operations, if otherwise conforming to the proper tests, would not require the serving of actual meals in order to constitute the place a restaurant. However the necessity for the serving of food and drink contemplates food and drink in the usual and ordinary sense; and a place which operates merely for the sale of such commodities as ice cream and

> soft drinks would not be regarded as a restaurant.

Id. 271 S.W.2d at 258.

According to common understanding, a tavern which sells only alcoholic beverages is not a cafe, cafeteria, lunchroom or restaurant. While a tavern which sells only alcoholic beverages does sell "food" as defined in Section 92.325(2), a tavern is not a "food establishment" as defined in Section 92.325(3) since it is not a cafe, cafeteria, lunchroom or restaurant. Therefore, we conclude the City of Kansas City is not authorized by Sections 92.325 to 92.340, RSMo Supp. 1991, to impose the convention and tourism tax on taverns which only sell alcoholic beverages.

Because of our answer to your first question, we do not address your second question.

CONCLUSION

It is the opinion of this office that Sections 92.325 to 92.340, RSMo Supp. 1991, do not authorize the City of Kansas City to impose the convention and tourism tax on taverns which sell only alcoholic beverages.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CITIES, TOWNS AND VILLAGES:
CITY OFFICERS - OFFICIALS:
CONFLICT OF INTEREST:
FOURTH CLASS CITIES:
INCOMPATIBILITY OF OFFICES:

The mayor of a fourth class city may not collect, in addition to his salary as mayor, an hourly payment for work for the city on government grants; on street projects; supervising park improvements, road improvements and repairs; and supervising improvements on the city's water and sewer facilities.

May 5, 1992

OPINION NO. 110-92

The Honorable Phil Smith
Representative, District 16
State Capitol Building, Room 115-F
Jefferson City, Missouri 65101

Dear Representative Smith:

This opinion is in response to your questions asking:

> Is it legal for the Mayor of a Fourth Class City to collect, in addition to his salary, a payment for his expenses[1] and an hourly payment for his work for the City on government grants, on street projects, for supervising park improvements, road improvements and repairs and for supervising improvements on the water and sewer facilities for the Fourth Class City?
>
> If it is permissible for the Mayor to perform those duties for that compensation, may he do so without first soliciting bids from other persons or businesses who provide similar services?

---

[1]From the information you included with your opinion request, it appears the primary issue about which you are concerned is the hourly payment to the mayor for certain work. Because it is unclear whether the expense reimbursements to which your question relates are reimbursements for expenses which may relate to his duties as mayor, we do not address that aspect of your question relating to reimbursements for expenses.

Missouri courts have followed the long-standing common law rule that "[a] member of an official board cannot contract with the body of which he is a member." Nodaway County v. Kidder, 344 Mo. 795, 129 S.W.2d 857, 861 (1939).

> [T]he general rule is "that an officer of a public corporation cannot become personally interested in a contract with the board of which he is a member, or in a contract with such public corporation with reference to the performance of any labor or services as to which he has in any way a public duty to perform, either by overseeing or passing upon such labor, or auditing or allowing a claim therefor, or directing the payment thereof." Annotation 34 L.R.A., N.S., 129, 131; . . . .

Polk Tp., Sullivan County v. Spencer, 259 S.W.2d 804, 805 (Mo. 1953). See also Attorney General Opinion No. 86-87; Attorney General Opinion No. 141, Hall, 1975; Attorney General Opinion Letter No. 149, Argenbright, 1967; and Attorney General Opinion No. 465, Norbury, 1966, copies of which are enclosed.

In Hawkins v. City of Fayette, 604 S.W.2d 716 (Mo. App., W.D. 1980), the Court upheld a city ordinance increasing compensation of the mayor on the basis of additional duties named in the ordinance which were not germane and incidental to the office of mayor. The additional duties considered by the Court included budget preparation; "detailed work of making application for state and federal grants, making trips concerning them, assuming the lead in applying for them and reporting to the Board of Aldermen at its bi-monthly meetings on how he was progressing on them"; and detailed supervision of the operation of electric and water utilities. Id., 604 S.W.2d at 721-722.

In defining the issue for resolution, the Court stated:

> Mo. Const. Art. VII, § 13, provides that the compensation of a municipal officer shall not be increased during the term of office, and § 79.270, RSMo 1978, provides that the salary of an officer of the city shall not be changed during the time for which he was appointed or elected. The determinative issue is whether the duties above, prescribed by the Board of Aldermen, are within those ordinarily performed by a mayor of a fourth class city, i.e., were they incidental to and germane to that office, or were they, in fact, additional

> duties for which the Board of Aldermen could, through passage of an ordinance, legally provide extra compensation above the regular salary of the mayor? [Emphasis added.]

Id., 604 S.W.2d at 719. The question of whether the mayor entering a contract to perform additional services to the city would violate public policy was not presented to nor considered by the Court in Hawkins. The Court in Hawkins did not overrule Nodaway County v. Kidder, supra, nor did it abandon the long-standing common law doctrine presented in that case. It simply did not address the question. Because the Court in Hawkins did not address this long-standing common law doctrine, we do not consider the case as affecting the continued viability of the doctrine.

Based on the common law holding that the employment of an individual by a public body of which he is a member is void as against public policy, we conclude that the mayor of a fourth class city may not collect, in addition to his salary as mayor, an hourly payment for work for the city on government grants; on street projects; supervising park improvements, road improvements and repairs; and supervising improvements on the city's water and sewer facilities.

Because of our answer to your first question, we do not address your second question.

CONCLUSION

It is the opinion of this office that the mayor of a fourth class city may not collect, in addition to his salary as mayor, an hourly payment for work for the city on government grants; on street projects; supervising park improvements, road improvements and repairs; and supervising improvements on the city's water and sewer facilities.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 86-87
Opinion No. 141, Hall, 1975
Opinion Letter No. 149, Argenbright, 1967
Opinion No. 465, Norbury, 1966

BANDS:
CITIES, TOWNS AND VILLAGES:
CITY BANDS:
HANCOCK AMENDMENT:
PROPERTY TAX:
TAXATION - CITIES, TOWNS AND VILLAGES:
TAXATION - TAX RATE:

The City of St. Charles may not impose a band tax pursuant to Section 71.640, RSMo 1986, without voter approval.

May 5, 1992

OPINION NO. 134-92

The Honorable Steve Ehlmann
Representative, District 19
State Capitol Building, Room 201E
Jefferson City, Missouri 65101

Dear Representative Ehlmann:

This opinion is in response to your question asking:

> Can the City of St. Charles reinstate a band tax pursuant to 71.640 without first getting voter approval?

We understand, from information supplied with your opinion request, that the City of St. Charles established a band tax in 1929 in accordance with the statutory section in effect at that time which allowed cities of less than 25,000 population to levy such a tax. The current version of that statute is numbered Section 71.640, RSMo. In 1977, the population of the City of St. Charles had reached more than 35,000. In 1978, the city concluded it was no longer authorized by Section 71.640 to levy the band tax, and the tax was discontinued in 1978.

In 1979, Section 71.640 was amended to allow certain cities having a population of over 35,000 to levy such a tax. Section 71.640, RSMo 1986, as amended by House Bill No. 465, 80th General Assembly, First Regular Session (1979), provides:

> 71.640. Tax for band fund authorized.--Any city, village or town having a population of less than twenty-five thousand and <u>any city having a population of more than thirty-five thousand located in any county of the first class contiguous to a county of the first class having a charter form of government</u>

> and not containing any part of a city of over four hundred thousand, howsoever organized, and irrespective of its form of government, may, by one of the two methods authorized in section 71.650, levy a tax for use in providing free band concerts, or equivalent musical service by the band upon occasions of public importance. [Emphasis added.]

Section 71.650, RSMo 1986, provides:

> 71.650. Tax for band fund--limitations.--1. The mayor and council, board of aldermen or board of trustees may levy a tax of not more than one-half mill on each one dollar assessed valuation on all property in such city, village or town, or, when initiated by a petition signed by at least ten percent of the voters, the question shall be submitted to the voters, and a majority of the voters thereon shall be sufficient to carry the provisions of this law into effect, and it shall become the duty of the mayor and council, board of aldermen or board of trustees to levy each year on all the property in such city, village or town, a tax of not to exceed two mills, or such part thereof as shall be petitioned for, on each one dollar assessed valuation.
>
> 2. The question shall be submitted in substantially the following form:
>
> Shall . . . . . (name of city, town, or village) levy a tax of . . . . . mills on each one dollar assessed valuation for the creation of a band fund?
>
> 3. The levy made under either of the options of sections 71.640 to 71.670 shall not increase the tax levy of any such political subdivision to exceed the limitations fixed and prescribed by the constitution and laws of this state.

In Attorney General Opinion Letter No. 196-87, a copy of which is enclosed, this office addressed a similar question

asking whether a county nursing home district which had voluntarily discontinued a property tax levy in 1977 could reimpose the tax without voter approval. We concluded that the district could not impose the property tax without voter approval.

On November 4, 1980, the voters in this state adopted what is commonly referred to as the Hancock Amendment. Article X, Section 22 of the Missouri Constitution, which was adopted as part of the Hancock Amendment, provides in part:

> Section 22. Political subdivisions to receive voter approval for increases in taxes and fees -- rollbacks may be required -- limitation not applicable to taxes for bonds. (a) Counties and other political subdivisions are hereby prohibited from levying any tax, license or fees, not authorized by law, charter or self-enforcing provisions of the constitution when this section is adopted or from increasing the current levy of an existing tax, license or fees, above that current levy authorized by law or charter when this section is adopted without the approval of the required majority of the qualified voters of that county or other political subdivision voting thereon . . . .

In 1980, at the time of the adoption of this constitutional section, the City of St. Charles did not impose the property tax in question.

In Wenzlaff v. Lawton, 653 S.W.2d 215 (Mo. banc 1983), the Missouri Supreme Court in interpreting this provision stated:

> We first observe that § 22(a) contains two separate and distinct clauses. We think it is clear that the first clause prohibits political subdivisions from levying, without voter approval, a tax that was not authorized by law when the Amendment was adopted. We think it equally clear that the second clause requires voter approval before there can be an increase in the current levy of an existing tax above the current levy authorized by law on November 4, 1980.

> Here, the cities increased the current levy of the taxes in question above the current levy in effect on November 4, 1980. They contend they have the authority, under the Amendment, to increase property taxes, without the required approval of the voters, up to the maximum rate authorized by law. This argument ignores the second clause of § 22(a) and the language therein concerning "current levy of an existing tax."
>
> * * *
>
> In considering the provisions as a whole, in harmony with all other provisions, we reject cities' contention. To do otherwise would amount to an unnatural construction and render the second clause meaningless. Our conclusion is consistent with the objectives of the Amendment as understood by the voters. The official ballot title for the Amendment specifically informed the electorate that it "prohibits local tax or fee increases without popular vote." [Emphasis in original.] Id. at 216-217.
>
> * * *

The band tax levy of the City of St. Charles at the time of the adoption of the Hancock Amendment was zero. Applying the reasoning set forth in Wenzlaff v. Lawton, supra, the city may not impose the band tax in question without voter approval.

CONCLUSION

It is the opinion of this office that the City of St. Charles may not impose a band tax pursuant to Section 71.640, RSMo 1986, without voter approval.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion Letter No. 196-87

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 11, 1992

OPINION LETTER NO. 136-92

The Honorable Mike Lybyer
Senator, District 16
State Capitol Building, Room 333
Jefferson City, Missouri 65101

Dear Senator Lybyer:

This opinion letter is in response to your questions asking:

1. May a school district receive a donation of property located within another school district and hold title to such property?

2. May a school district lease property located within another school district?

3. May such a school district operate a high school program on property either donated or leased to such district and located within the boundaries of another school district?

4. May a group of school districts operate a high school program under an intergovernmental cooperation agreement as provided in Chapter 70, RSMo on property located within the boundaries of one of the participating districts?

Along with your questions, you state:

> The Fairview R-XI School District is an elementary district that currently sends its students to another district for high school on a tuition basis. The district has received an offer from an individual to

> build a high school and donate it as well as a substantial amount of surrounding property to the district, however, such building and property would be located within the boundaries of another district. The district would like to receive the donation and operate the high school [f]or the benefit of its students. If the district cannot own property located in another district, it would like to operate a high school on such property under a lease from the donor.
>
> In any case, the district would like to know whether it can operate a high school program under an intergovernmental cooperation agreement with other school districts on property owned by one of the districts.

We assume that the donation of property to the school district is contingent on the school district agreeing to use the property for the operation of a high school.

Section 167.131, RSMo 1986, provides in part:

> 167.131. District without high school to pay tuition for pupil, when--amount to be charged.--1. The board of education of each district in this state that does not maintain an approved high school offering work through the twelfth grade shall pay the tuition of each pupil resident therein who has completed the work of the highest grade offered in the schools of the district and who attends an approved high school in another district of the same or an adjoining county, or an approved high school maintained in connection with one of the state institutions of higher learning, where work of one or more higher grades is offered.
>
> * * *

We assume from the facts you have provided that the Fairview R-XI School District currently sends students to high school in another district pursuant to Section 167.131.

Section 177.091, RSMo Supp. 1991, provides in part:

> 177.091. Elementary and high schools, establishment--acquisition of additional grounds--sale of property.--
>
> * * *
>
> 2. The board [school board in each six-director district] may also establish high schools and may select and procure sites and erect and furnish buildings therefor.
>
> 3. The board may acquire additional grounds when needed for school purposes.
>
> * * *

While Section 177.091 does not specify that the site of a high school must be within the boundaries of the school district establishing it, Section 177.011, RSMo 1986, states: "The title of all schoolhouse sites and other school property is vested in the district in which the property is located. All property leased or rented for school purposes shall be wholly under the control of the school board during such time. . . ."

Statutes relating to the same subject are to be considered together and harmonized if possible so as to give meaning to all provisions of each. State ex rel. Lebeau v. Kelly, 697 S.W.2d 312, 315 (Mo. App. 1985). In reading Sections 177.091 and 177.011 together, we conclude that the authority granted a school district by Section 177.091 to select and procure sites for and establish high schools and the authority to acquire additional grounds for school purposes is limited by Section 177.011 to property within the boundaries of the acquiring district.

Therefore, in response to your first three questions, we conclude that a school district is not authorized to receive a donation of property or lease property for the purpose of operating a high school within the boundaries of another school district.

Your fourth question asks whether a group of school districts may operate a high school under an intergovernmental cooperation agreement as provided in Chapter 70, RSMo.

Section 70.210, RSMo Supp. 1991, provides:

> 70.210. Definitions.--As used in sections 70.210 to 70.320, the following terms mean:
>
> (1) "Governing body", the board, body or persons in which the powers of a municipality or political subdivision are vested;
>
> (2) "Municipality", municipal corporations, political corporations, and other public corporations and agencies authorized to exercise governmental functions;
>
> (3) "Political subdivision", counties, townships, cities, towns, villages, school, county library, city library, city-county library, road, drainage, sewer, levee and fire districts, soil and water conservation districts, watershed subdistricts, county hospitals, and any board of control of an art museum, and any other public subdivision or public corporation having the power to tax.

Section 70.220, RSMo 1986, provides:

> 70.220. Political subdivisions may cooperate with each other, with other states, the United States or private persons.--Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision

> shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides. [Emphasis added.]

Because we have concluded in answer to your first three questions that a school district cannot acquire property for the operation of a high school within the boundaries of another school district and because Section 167.131 expressly provides that a school district without a high school shall pay tuition for its resident pupils to attend a high school in another district, we conclude the agreement described in your questions would not be authorized by Section 70.220. Such an agreement would not be "within the scope of the powers of such . . . political subdivision."

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ARCHITECTS AND ENGINEERS:
COUNTIES:
COUNTY COMMISSIONERS:
NEPOTISM:

It would not be a violation of Article VII, Section 6, of the Constitution of Missouri for a county commission to contract with an architectural firm in which the son-in-law of the presiding commissioner is a non-equity participating partner.

August 11, 1992

OPINION NO. 138-92

Thomas E. Mountjoy
Greene County Prosecuting Attorney
Greene County Courthouse
Springfield, Missouri 65802

Dear Mr. Mountjoy:

This opinion is in response to your question asking:

> May the Greene County Commission appoint or employ the architectural firm which has as a minority partner the son-in-law of the Presiding Commissioner for purposes of architectural services in the planning and construction of a public building project of Greene County without violating Article 7, Section 6 of the Missouri Constitution?

Along with your question, you explain:

> . . . The County Commission is currently considering the appointment or employment of an architectural firm to assist the County in a public building project. In considering request for proposals from various architectural firms, one of the firms that would be considered is . . . . [a] Missouri partnership [which] consists of tier one partners who are equity participating partners and tier two partners who are non-equity participating but do share on the basis of profit and loss. The individual married to the daughter of the Presiding Commissioner, and

> as his son-in-law is a partner in tier two of the Missouri general partnership. The architectural firm . . . holds itself out to the public as providing services for architectural and engineering services in southwest Missouri.

Article VII, Section 6, of the Constitution of Missouri provides:

> Section 6. Penalty for nepotism. Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment.

Article VII, Section 6, of the Constitution of Missouri prohibits with the penalty of forfeiture of office, any public officer from appointing a relative within the degree named to public office or employment. A county presiding commissioner is a public officer within the meaning of the provision. Likewise, a son-in-law is a relative within the fourth degree by affinity. The issue is whether the county commission contracting with an architectural firm in which the presiding commissioner's son-in-law is a non-equity participating partner would constitute a public officer appointing a relative to public office or employment.

In Attorney General Opinion No. 88-90, a copy of which is enclosed, we addressed the question of whether a public administrator could contract with an abstract corporation whose stock is wholly owned by her brother-in-law. We stated:

> The public administrator may contract with the abstract corporation, regardless of her brother-in-law's ownership, without running afoul of Article VII, Section 6. Article VII, Section 6 forbids the hiring of a relative within the fourth degree by consanguinity or affinity. The corporation is not a "relative" of the public administrator.

Id., p. 3.

Thomas E. Mountjoy

Attorney General Opinion No. 88-90 i consistent with Attorney General Opinion No. 92, Hyler, 1963, a copy of which is enclosed, in which this office concluded a county commission's purchase of road gravel from a company owned and operated by a commissioner's son did not violate Article VII, Section 6.

In the situation about which you are concerned, the possible contract would be between the county and the architectural firm in which the presiding commissioner's son-in-law is a non-equity participating partner. Just as in Opinion No. 88-90, the abstract corporation was not a relative of the public administrator, in the situation about which you are concerned, the architectural firm is not a relative of the presiding commissioner. Therefore, we conclude no violation of the nepotism provision would occur by the county contracting with such firm.

CONCLUSION

It is the opinion of this office that it would not be a violation of Article VII, Section 6, of the Constitution of Missouri for a county commission to contract with an architectural firm in which the son-in-law of the presiding commissioner is a non-equity participating partner.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 88-90
Opinion No. 92, Hyler, 1963

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

May 13, 1992

OPINION LETTER NO. 143-92

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to Sections 142.025, 142.372, and 225.200, RSMo Supp. 1991. A copy of the initiative petition which you submitted to this office on May 5, 1992 is attached.

We conclude that the petition must be rejected as to form for the following reasons:

1. The initiative petition does not contain the full text of the measure. Article III, Section 50 of the Missouri Constitution and Section 116.050, RSMo 1986, require the initiative petition to contain the full text of the measure.

2. The initiative petition does not contain an enacting clause. Article III, Section 50 of the Missouri Constitution requires and sets forth the form of the enacting clause for proposed constitutional amendments and proposed laws.

In addition, we note the initiative petition refers to "the proposed constitutional amendment" although the intent is to apparently propose changes in statutory provisions. Several typographical errors are also apparent.

Section 116.040, RSMo 1986, provides in part:

> If this form [the form specified in Section 116.040] is followed substantially, it shall be sufficient, disregarding clerical and merely technical errors.

However, the significance of the deficiencies itemized above causes us to reject the petition as to form.

Because of our rejection of the form of the petition for the reasons itemized above, we have not reviewed the petition to determine if additional deficiencies may exist.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

November 3, 1992

OPINION LETTER NO. 147-92

Thomas E. Mountjoy
Greene County Prosecuting Attorney
Greene County Courthouse
Springfield, Missouri 65802

Dear Mr. Mountjoy:

This opinion letter is in response to your question asking:

> May funds generated pursuant to Sec. 190.300 through 190.310, telephone emergency service, be utilized for the acquisition of functions other than telephone equipment such as radios, dispatching services, dispatching personnel, dispatching buildings and other related dispatching functions.

Along with your question, you state:

> Recently Greene County, Missouri voters paid taxes pursuant to Sec. 190.305, R.S.Mo. which provides that the tax shall be utilized for the "operation of emergency telephone service." An issue has arisen as to whether or not the dispatching of emergency equipment via radio is a part of an emergency telephone system. Sec. 190.325 provides for a central dispatch for emergency systems. This section, which does not apply to Greene County, however, suggests that there is a separate function and available tax which would be incurred for that purpose.

Based on additional information provided to us, we understand a person or persons will be designated as the emergency telephone system operator to receive incoming calls made by persons dialing "911." This "911" operator will then

report the emergency to the appropriate emergency "dispatching personnel" of a particular local government such as, for example, the dispatcher of a particular city's police department or the dispatcher of a particular fire protection district.

With regard to your question, we understand the "radios" about which you inquire are the radios used by the particular local government responding to the "911" emergency telephone call. The "radios" about which you inquire are, for example, the radio used by the dispatcher of a particular city's police department to contact a police car or police officer -- the radio located at that city's dispatching office, the radio located in a police car of that city, and the radio carried by a city police officer.

We understand the "dispatching personnel" to which you refer is the dispatcher of the particular local government responding to the "911" emergency telephone call. For example, the "dispatching personnel" might be the dispatcher for the police department of a particular city or the dispatcher for a particular fire protection district.

With regard to "dispatching buildings" we understand you are not referring to the building housing the emergency telephone system "911" operator but instead are referring to the building housing the dispatching personnel of a particular local government. For example, the "dispatching building" to which you refer might be a building in which the dispatching personnel for a particular city's police department is located or the building in which the dispatching personnel for a particular fire protection district is located. The "dispatching building" which is the subject of your question is a different building than that in which the emergency telephone system "911" operator is located.

The emergency telephone service statutes appear in Sections 190.300 to 190.320, RSMo.[1] Section 190.300, RSMo 1986, provides:

---

[1]Because your question relates to Greene County, Sections 190.325 to 190.329, RSMo Supp. 1991, which apply to "any county of the first class without a charter form of government which adjoins a first class county with a charter form of government and two second class counties," are not applicable.

Thomas E. Mountjoy

190.300. Definitions.--Unless the context clearly requires otherwise, the following terms and phrases mean:

(1) "Emergency telephone service", a telephone system utilizing a single three digit number "911" <u>for reporting police, fire, medical or other emergency situations</u>;

(2) "Emergency telephone tax", a tax to finance the operation of emergency telephone service;

(3) "Exchange access facilities", all facilities provided by the service supplier for local telephone exchange access to a service user;

(4) "Governing body", the legislative body for a city, county or city not within a county;

(5) "Person", any individual, firm, partnership, copartnership, joint venture, association, cooperative organization, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or fraternal organization, estate, trust, business or common law trust, receiver, assignee for the benefit of creditors, trustee or trustee in bankruptcy, or any other service user;

(6) "Public agency", any city, county, city not within a county, municipal corporation, public district or public authority located in whole or in part within this state which provides or has authority to provide for fighting, law enforcement, ambulance, emergency medical, or other emergency services;

(7) "Service supplier", any person providing exchange telephone services to any service user in this state;

(8) "Service user", any person, not otherwise exempt from taxation, who is provided exchange telephone service in this state;

(9) "Tariff rate", the rate or rates billed by a service supplier to a service user as stated in the service supplier's tariffs, approved by the Missouri public service commission which represent the service supplier's recurring charges for exchange access facilities or their equivalent, exclusive of all taxes, fees, licenses or similar charges whatsoever. [Emphasis added.]

Section 190.305, RSMo Supp. 1991, provides:

190.305. Emergency telephone service may be provided--tax levy authorized--time limitation on tax--rate--collection.--1. In addition to its other powers for the protection of the public health, a governing body may provide for the operation of an emergency telephone service and may pay for it by levying an emergency telephone tax for such service in those portions of the governing body's jurisdiction for which emergency telephone service has been contracted. The governing body may do such other acts as are expedient for the protection and preservation of the public health and are necessary for the operation of an emergency telephone system. The governing body is hereby authorized to levy the tax in an amount not to exceed fifteen percent of the tariffed local service rate, as defined in section 190.300, or seventy-five cents per access line per month, whichever is greater, except as provided in sections 190.325 to 190.329, in those portions of the governing body's jurisdiction for which emergency telephone service has been contracted.

2. Such tax may be levied for no longer than three years, after which the governing body may continue to renew such

levy for no longer than three years at a time. The tax shall be utilized to pay for the operation of emergency telephone service as deemed appropriate by the governing body, and may be levied at any time subsequent to execution of a contract with the provider of such service at the discretion of the governing body, but collection of such tax shall not begin prior to two years before operation of the emergency telephone service.

3. Such tax shall be levied only upon the tariff rate. No tax shall be imposed upon more than one hundred exchange access facilities or their equivalent per person per location.

4. Every billed service user is liable for the tax until it has been paid to the service supplier.

5. The duty to collect the tax from a service user shall commence at such time as specified by the governing body in accordance with the provisions of sections 190.300 to 190.320. The tax required to be collected by the service supplier shall be added to and may be stated separately in the billings to the service user.

6. Nothing in this section imposes any obligation upon a service supplier to take any legal action to enforce the collection of the tax imposed by this section. The service supplier shall provide the governing body with a list of amounts uncollected along with the names and addresses of the service users refusing to pay the tax imposed by this section, if any.

7. The tax imposed by this section shall be collected insofar as practicable at the same time as, and along with, the charges for the tariff rate in accordance with the regular billing practice of the service supplier. The tariff rates determined by or stated on the billing of the service supplier are presumed to be

> correct if such charges were made in accordance with the service supplier's business practices. The presumption may be rebutted by evidence which establishes that an incorrect tariff rate was charged. [Emphasis added.]

Legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Wolff Shoe Company v. Director of Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). The General Assembly has defined "emergency telephone service" as "a telephone system utilizing a single three digit number '911' for reporting police, fire, medical or other emergency situations." [Emphasis added.] Section 190.300(1). Section 190.305.2 provides that the tax authorized by Sections 190.300 to 190.320 "shall be utilized to pay for the operation of emergency telephone service as deemed appropriate by the governing body." [Emphasis added.] Although "as deemed appropriate by the governing body" provides some discretion to the governing body as to the purposes for which the tax revenue may be used, the purposes are still limited by the words of the statute.

Section 190.300(1) refers to a telephone system for "reporting" emergency situations. Webster's New World Dictionary, Second College Edition, defines "report" as "to give an account of . . . give information about . . . recount." Your question refers to "dispatching." The same dictionary defines "dispatch" as "to send off or out promptly". Based on the foregoing, we conclude that "reporting" as used in Section 190.300(1) is a separate function from "dispatching."[2]

We must examine your question concerning radios, dispatching personnel and dispatching buildings in the context of the applicable statutory provisions.

---

[2]In the factual situation you present, the emergency telephone system "911" operator does not dispatch emergency vehicles or personnel but instead reports the emergency to the appropriate emergency "dispatching personnel" of a particular local government such as, for example, the dispatcher of a city police department or the dispatcher of a fire protection district. Our comments in this opinion letter are directed at the particular factual situation you have presented.

Thomas E. Mountjoy

1. Radios - The radios about which you inquire are, for example, radios used by the dispatcher of a particular city police department to contact a police car or police officer, both the radio located at the city's dispatching office and in a city police car or carried by a city police officer. Such radios are not included in the definition of "emergency telephone service" in Section 190.300(1) and would not be a permissible use of the tax revenue.

2. Dispatching personnel - The dispatching personnel about which you inquire are, for example, the dispatcher for a particular city's police department. Such person is the one to whom the emergency telephone system "911" operator reports the emergency when the emergency is one to which that city's police department is the appropriate entity to respond. Such "dispatching personnel" of a local government are not included in the definition of "emergency telephone service" in Section 190.300(1) and would not be a permissible use of the tax revenue.

3. Dispatching buildings - The buildings about which you inquire are where dispatching personnel of a particular local government are located and not where the emergency telephone service "911" operator is located. Such a building is not included in the definition of "emergency telephone service" in Section 190.300(1) and would not be a permissible use of the tax revenue.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 5, 1992

OPINION LETTER NO. 148-92

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to the repeal of Sections 311.181 and 311.182 of the Missouri Revised Statutes. A copy of the initiative petition and the proposed law which you submitted to this office on May 29, 1992, is attached for reference.

We approve the petition as to form. However, since the Secretary of State has been given final approval or rejection authority under Section 116.332, our approval of the form of the petition does not preclude you from rejecting the petition.

Inasmuch as our review is simply for the purpose of determining sufficiency as to form, the fact that we do not reject the petition is not to be construed as a determination that the petition is sufficient as to substance. Likewise, since our review is mandated by statute, no action we take with respect to such review should be construed as an endorsement of the petition or as the expression of any view respecting the adequacy or inadequacy of the petition generally or of the objectives of its proponents.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY
65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P. O. Box 899
(314) 751-3321

June 10, 1992

OPINION LETTER NO. 149-92

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

You have submitted to us a statement of purpose prepared pursuant to Section 116.334, RSMo 1986. The statement which you have submitted is as follows:

> Shall sections 311.181 and 311.182 of the statutes of Missouri be repealed so that brewers and manufacturers of malt liquor and nonintoxicating beer are no longer required to enter into contracts with wholesalers in which wholesalers sell certain brands of malt liquor and nonintoxicating beer within designated geographical areas?

See our Opinion Letter No. 148-92.

We approve the legal content and form of the proposed statement. Under the provisions of Section 116.334, the approved statement of purpose, unless altered by a court, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

June 29, 1992

OPINION LETTER NO. 151-92

The Honorable Dennis Ziegenhorn
Representative, District 157
State Capitol Building, Room 413B
Jefferson City, Missouri 65101

Dear Representative Ziegenhorn:

This opinion letter is in response to your questions concerning the selection of a city collector for the City of Miner, Missouri. Your specific questions are as follows:

> Under Section 79.280, RSMo, what procedure is used during the special meeting to select a successor?
>
> Does the mayor of a fourth class city appoint the successor with the consent and approval of the Board of Aldermen?
>
> Can a member of the Board of Aldermen of a fourth class city nominate a potential successor from the floor and the Board of Aldermen vote on whether to appoint the nominee?

The information included with your opinion request indicates: (1) the City of Miner is a fourth class city, (2) the city collector is an elected official, (3) the city collector has resigned, and (4) it is more than six months before a general municipal election.

Section 79.280, RSMo Supp. 1991, relating to the filling of vacancies in certain offices in fourth class cities, provides:

> 79.280. Vacancies in certain offices, how filled.--<u>If a vacancy occurs</u>

> in any elective office, the mayor or the person exercising the duties of the mayor shall cause a special meeting of the board of aldermen to convene where a successor to the vacant office shall be selected. The successor shall serve until the next regular municipal election. If a vacancy occurs in any office not elective, the mayor shall appoint a suitable person to discharge the duties of such office until the first regular meeting of the board of aldermen thereafter, at which time such vacancy shall be permanently filled. [Emphasis added.]

Section 79.280 provides for a special meeting of the board of aldermen where a successor "shall be selected." However, the section sets forth no specific procedure for making the "selection."[1]

---

[1]With your opinion request, you provided a copy of an ordinance of the City of Miner regarding the filling of vacancies. That part of the ordinance which you provided which appears relevant to the vacancy about which you are concerned is as follows:

> SECTION THIRTEEN: Vacancies. Vacancies shall be filled as follows:
>
> 1. If a vacancy occurs in any elective office, the board of aldermen, by ordinance shall call a special election to be held to fill such vacancy, giving at least ten days notice thereof by at least five handbills conspicuously posted in at least five public places in each ward of the city, or by publication in a newspaper printed and published within the city of the date, time and place of holding such election and of the officer to be elected; provided, that when any such vacancy occurs within six months preceding a general municipal election, ...

Under the situation you have described, there is more than six months before the next general municipal election. Pursuant to the foregoing ordinance, a special election would be held to fill such vacancy.

(Footnote Continued)

The Honorable Dennis Ziegenhorn

The legislative power of a city of the fourth class, vested in the board of aldermen and the mayor, can be exercised only by ordinance. City of Jackson v. Houck, 43 S.W.2d 908, 909 (Mo. App. 1931). Section 79.130, RSMo Supp. 1991, sets forth the procedure to be followed by a fourth class city in enacting an ordinance. Such section provides:

> 79.130. Ordinances--procedure to enact.--The style of the ordinances of the city shall be: "Be it ordained by the board of aldermen of the city of . . . . . , as follow:" No ordinance shall be passed except by bill, and no bill shall become an ordinance unless on its final passage a majority of the members elected to the board of aldermen shall vote for it, and the ayes and nays be entered on the journal. Every proposed ordinance shall be introduced to the board of aldermen in writing and shall be read by title or in full two times prior to passage, both readings may occur at a single meeting of the board of aldermen. If the proposed ordinance is read by title only, copies of the proposed ordinance shall be made available for public inspection prior to the time the bill is under consideration by the board of

---

(Footnote Continued)

It it well settled that a municipal ordinance must be in harmony with a general law of the state upon the same subject and is void if in conflict with the state law. See Missouri Attorney General Opinion No. 46-91, a copy of which is enclosed. The city ordinance providing an election to be called to fill the vacancy is inconsistent with and in irreconcilable conflict with the state statute providing a meeting of the board of aldermen to convene where a successor to the vacant office shall be selected. Therefore, Section 79.280 providing a meeting of the board of aldermen to convene where a successor to the vacant office shall be selected prevails over the city ordinance providing an election to be called to fill the vacancy.

We have not been ask to consider and we do not address the situation of a city ordinance setting forth a procedure for filling a vacancy at a meeting of the board of aldermen.

> aldermen. No bill shall become an ordinance until it shall have been signed by the mayor or person exercising the duties of the mayor's office, or shall have been passed over the mayor's veto, as herein provided.

Section 79.120, RSMo 1986, discusses the authority of the mayor:

> 79.120. Mayor may sit in board.-- The mayor shall have a seat in and preside over the board of aldermen, but shall not vote on any question except in case of a tie, nor shall he preside or vote in cases when he is an interested party. He shall exercise a general supervision over all the officers and affairs of the city, and shall take care that the ordinances of the city, and the state laws relating to such city, are complied with.

Section 79.140, RSMo 1986, concerning the signing of bills by the mayor and the adoption of ordinances if not approved by the mayor, provides:

> 79.140. Bills must be signed-- mayor's veto.--Every bill duly passed by the board of aldermen and presented to the mayor and by him approved shall become an ordinance, and every bill presented as aforesaid, but returned with the mayor's objections thereto, shall stand reconsidered. The board of aldermen shall cause the objections of the mayor to be entered at large upon the journal, and proceed at its convenience to consider the question pending, which shall be in this form: "Shall the bill pass, the objections of the mayor thereto notwithstanding?" The vote on this question shall be taken by ayes and nays and the names entered upon the journal, and if two-thirds of all the members-elect shall vote in the affirmative, the city clerk shall certify the fact on the roll, and the bill thus certified shall be deposited with the proper officer, and shall become an ordinance in the same manner and with like effect as if it had received the approval

> of the mayor. The mayor shall have power to sign or veto any ordinance passed by the board of aldermen; provided, that should he neglect or refuse to sign any ordinance and return the same with his objections, in writing, at the next regular meeting of the board of aldermen, the same shall become a law without his signature.

The procedure set forth in Section 79.130 for enacting an ordinance is mandatory. Cimasi v. City of Fenton, 659 S.W.2d 532, 535 (Mo. App. 1983).

Section 79.280 provides for a successor to be selected but sets forth no specific procedure. A city exercises its legislative function through the enactment of ordinances. Because the applicable statute fails to specify any specific procedure for the "selection," the successor is to be selected by the enactment of an ordinance in accordance with the procedure set forth in Section 79.130.

Very truly yours,

William L Webster

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 46-91

ASSOCIATE CIRCUIT JUDGES:
ELECTION OF JUDGES:
ELECTIONS:
JUDGES:
TERM OF OFFICE:

The associate circuit judges elected in November, 1992, to fill the judgeships created in 1991 under Section 478.320, RSMo 1986, because of an increase in a county's population serve the unexpired portion of a term ending December 31, 1994.

December 30, 1992

OPINION NO. 153-92

The Honorable Roy D. Blunt
Missouri Secretary of State
State Capitol Building, Room 208
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion is in response to your question asking:

> Shall the 1992 election for the 1991 newly created and appointed circuit court judgeships be for full regular terms of office ending in 1996 or for unexpired terms ending in 1994?

Along with your question, you state:

> After the 1990 census, the increase in population in the counties of Howell, Jefferson, Lawrence, Ozark and St. Charles entitled those counties to additional associate circuit judgeships. This is because section 478.320.1, RSMo 1986, provides that additional associate circuit judgeships be created when the population of a county increases by "one hundred thousand inhabitants or major fraction thereof."
>
> In the summer of 1991, Governor John Ashcroft responded to the census report and appointed new judges for these counties . . . . His authority to make those appointments came from section 105.030. That section 105.030 provides that such appointments shall continue until the first Monday in January after the next general

> election, at which general election a person shall be "elected to fill the unexpired portion of the term, or for the ensuing regular term, as the case may be."
>
> Those judgeship positions that were created in 1991 must run for office in the 1992 election. . . .

We assume from the information you have provided that the counties involved have not adopted the nonpartisan court plan as provided in Article V, Section 25 of the Constitution of Missouri.

Article V, Section 16 of the Constitution of Missouri provides:

> Section 16. Associate circuit judges, selection. Each county shall have such number of associate circuit judges as provided by law. There shall be at least one resident associate circuit judge in each county. Associate circuit judges shall be selected or elected in each county. In those circuits where the circuit judge is selected under section 25 of article 5 of the constitution the associate circuit judge shall be selected in the same manner. All other associate circuit judges shall be elected in the county in which they are to serve.

Article V, Section 19 of the Constitution of Missouri provides that associate circuit judges shall serve terms of four years.

Section 478.320, RSMo 1986, provides:

> 478.320. Associate circuit judges, authorized number--additional judges, when authorized--election--restrictions on practice of law or paid public appointment--residency requirement.--
>
> 1. In counties having a population of thirty thousand or less, there shall be one associate circuit judge. In counties having a population of more than thirty thousand and less than one hundred thousand, there shall be two associate circuit judges. In counties having a

> population of one hundred thousand or more, there shall be two associate circuit judges and one additional associate circuit judge for each additional one hundred thousand inhabitants or major fraction thereof.
>
> 2. In addition to the associate circuit judges authorized by subsection 1 of this section, one additional associate circuit judge is authorized for each magistrate which was provided in the county pursuant to the provisions of subsection 3 of section 482.010, RSMo, in effect on January 1, 1979. Additional associate circuit judges may be authorized in particular counties by law hereafter enacted.
>
> 3. Except in circuits where associate circuit judges are selected under the provisions of sections 25(a) to (g) of article V of the constitution, the election of associate circuit judges shall in all respects be conducted as other elections and the returns made as for other officers.
>
> 4. In counties where associate circuit judges are elected, they shall be elected by the county at large.
>
> 5. No associate circuit judge shall practice law, or do a law business, nor shall he accept, during his term of office, any public appointment for which he receives compensation for his services.
>
> 6. No person shall be elected as an associate circuit judge unless he has resided in the county for which he is to be elected at least one year prior to the date of his election; provided that, a person who is appointed by the governor to fill a vacancy may file for election and be elected notwithstanding the provisions of this subsection.

Pursuant to Section 1.100, RSMo 1986, the effective date of the United States decennial census was July 1, 1991. See State ex rel. Stark v. Jeter, 467 S.W.2d 882, 883 (Mo. banc 1971). The information attached to your opinion request

indicates that of the persons appointed as associate circuit judges in the counties in question, three were appointed to terms beginning July 1, 1991, one was appointed to a term beginning July 15, 1991, and one to a term beginning August 1, 1991.

In Missouri Attorney General Opinion No. 145, Kirkpatrick, 1980, a copy of which is enclosed, this office concluded "that the provisions of Section 105.030, RSMo, became applicable" to associate circuit judges not under the nonpartisan court plan who were appointed as additional judges. Id. at 4-5. Section 105.030, RSMo Supp. 1991, provides:

> 105.030. Vacancies, how filled.-- Whenever any vacancy, caused in any manner or by any means whatsoever, occurs or exists in any state or county office originally filled by election of the people, other than in the offices of lieutenant governor, state senator or representative, sheriff, or recorder of deeds in the city of St. Louis, the vacancy shall be filled by appointment by the governor except that when a vacancy occurs in the office of county assessor after a general election at which a person other than the incumbent has been elected, the person so elected shall be appointed to fill the remainder of the unexpired term; and the person appointed after duly qualifying and entering upon the discharge of his duties under the appointment shall continue in office until the first Monday in January next following the first ensuing general election, at which general election a person shall be elected to fill the unexpired portion of the term, or for the ensuing regular term, as the case may be, and the person so elected shall enter upon the discharge of the duties of the office the first Monday in January next following his election, except that when the term to be filled begins on any day other than the first Monday in January, the appointee of the governor shall be entitled to hold the office until such other date. This section shall not apply to vacancies in county offices in any county which has adopted a charter for its own government under section 18, article VI of the

> constitution. Any vacancy in the office of recorder of deeds in the city of St. Louis shall be filled by appointment by the mayor of that city. [Emphasis added.]

Opinion No. 145 concluded:

> Associate circuit judges who were appointed by the governor after the general election in 1978 and before January 2, 1979, as additional magistrates or to fill a vacancy under repealed [Sections] 482.010.3 or 482.020, in courts not under the nonpartisan court plan will complete the terms for which they were appointed December 31, 1980, and the persons elected to such offices at the November election in 1980 will serve the remainder of the term of the office ending December 31, 1982.

Id. at 5-6.

As discussed in Opinion No. 145, the term of office of associate circuit judges considered in that opinion ended December 31, 1982. Pursuant to Article V, Section 19 of the Constitution of Missouri, associate circuit judges serve terms of four years. The regular term of office of current associate circuit judges therefore ends December 31, 1994. Pursuant to Section 105.030, the associate circuit judges elected in November, 1992, in the five counties about which you inquire were elected to fill the unexpired portion of the term ending December 31, 1994. Therefore, the associate circuit judges so elected are elected to serve until December 31, 1994.

CONCLUSION

It is the opinion of this office that the associate circuit judges elected in November, 1992, to fill the judgeships created in 1991 under Section 478.320, RSMo 1986, because of an increase in a county's population serve the unexpired portion of a term ending December 31, 1994.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 145, Kirkpatrick, 1980

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

June 29, 1992

OPINION LETTER NO. 154-92

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

Dear Secretary Blunt:

This opinion letter is in response to your request for our review under Sections 116.332 and 116.334, RSMo 1986, for sufficiency as to form of an initiative petition relating to Sections 142.025, 142.372, and 226.200, RSMo Supp. 1991. A copy of the initiative petition which you submitted to this office on June 19, 1992 is attached.

We conclude that the petition must be rejected as to form. The initiative petition does not contain the full text of the measure. Article III, Section 50 of the Missouri Constitution and Section 116.050, RSMo 1986, require the initiative petition to contain the full text of the measure.

Section 116.040, RSMo 1986, provides in part:

> If this form [the form specified in Section 116.040] is followed substantially, it shall be sufficient, disregarding clerical and merely technical errors.

However, the significance of the deficiency described above causes us to reject the petition as to form.

Because of our rejection of the form of the petition for the reason described above, we have not reviewed the petition to determine if additional deficiencies may exist.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure

AGRICULTURE:
AGRICULTURAL EXTENSION:
EXTENSION COUNCIL:
UNIVERSITIES:
MISSOURI UNIVERSITY

Section 281.040.2, RSMo Supp. 1991, prohibits the charging of a fee for the course of instruction required for individuals to obtain a certified private applicator's license from the Director of the Department of Agriculture or for educational materials needed to successfully complete the course.

November 12, 1992

OPINION NO. 155-92

Tim Kelley, Director
Missouri Department of Agriculture
Post Office Box 630
1616 Missouri Boulevard
Jefferson City, Missouri 65102

Dear Director Kelley,

This opinion is in response to your question asking:

> Whether existing law, under Chapters 262 or 281, RSMo, prohibits the University of Missouri, any county extension council or program from charging farmers a fee for participation in a private applicator training course or for educational materials provided by the University of Missouri Cooperative Extension Service when acting for the Director of the Department of Agriculture under a Memorandum of Understanding.

We understand the educational materials about which you inquire are materials which a participant in the course would need to successfully complete the course.

The duties and powers of the Director of the Department of Agriculture are set out primarily in Section 261.020, RSMo 1986, which provides in part:

> 261.020. Duties and powers of director.--The state director of the department of agriculture is hereby

> constituted the official who has supervision of the state fair and of all the legalized departments of the state which are of a regulatory nature for the advancement of horticulture and agriculture. He shall cooperate with the college of agriculture of the university of Missouri in all ways beneficial to the horticultural and agricultural interests of the state, without duplicating research, extension or educational work conducted by said college, but nothing herein shall be construed as to subordinate the state department of agriculture to the said college of agriculture. . . .

Chapter 281, RSMo, empowers the Director of the Department of Agriculture to provide for the regulation of the use of pesticides. Section 281.030, RSMo Supp. 1991, provides in part:

> 281.030. Classification of licenses, how made--rulemaking powers, suspension and reinstatement procedure--fees.--1. The director may, by regulation, classify certified applicator, operator or technician licenses to be issued under sections 281.010 to 281.115. Such classifications may include but not be limited to commercial applicators, noncommercial applicators, private applicators, public operators or pesticide technicians. . . .
>
> * * *

Section 281.040, RSMo Supp. 1991, provides in part:

> 281.040. Private applicator's license, qualifications for, duration, renewal--emergency use of restricted pesticides, when authorized.--
>
> 1. No private applicator shall use any restricted use pesticide unless he first complies with the requirements determined pursuant to subsection 2 or 5 of this section, as necessary to prevent unreasonable adverse effects on the environment, including injury to the

> applicator or other persons, for that specific pesticide use.
>
> 2. The private applicator shall qualify for a certified private applicator's license by attending a course of instruction provided by the director on the use, handling, storage and application of restricted use pesticides. The content of the instruction shall be determined and revised as necessary by the director. Upon completion of the course, the director shall issue a certified private applicator's license to the applicant. The director shall not collect a fee for the issuance of such license. [Emphasis added.]

* * *

Along with your opinion request, you enclosed a copy of a "Memorandum of Understanding" entered into in 1975 by the Director of the Department of Agriculture and the Director of the University Extension Food and Fiber Programs. The memorandum provides that "[t]he Extension Service will accept responsibility for developing an educational program for the training of private applicators, commercial applicators, and possibly pesticide dealers."

In construing the provisions of a statute, legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Section 281.040.2 provides a prerequisite for an individual to qualify for a certified private applicator's license, namely, attendance of "a course of instruction provided by the director on the use, handling, storage and application of restricted use pesticides." Pursuant to the cooperative relationship between the Department of Agriculture and the University of Missouri discussed in Section 261.020, the Director of the Department of Agriculture provides a course of instruction by using the services of the University of Missouri. Section 281.040.2 further provides that on completion of the course of instruction, the applicant shall be issued a certified private applicator's license and "[t]he director shall not collect a fee for the issuance of such license." Because the course of instruction is a requirement for licensure, we conclude the two are so closely related that a fee for the course of instruction or for educational materials needed to successfully complete the

course would constitute a fee for the license, which is prohibited by Section 281.040.2

Section 262.593.3, RSMo 1986, provides that University of Missouri extension councils "may collect fees for specific services which require special equipment or personnel, such as a soil testing laboratory, seed testing service or other educational service. . . ." [Emphasis added.] This provision applies generally to services offered by extension councils. Section 281.040.2 specifically prohibits the charging of a fee for the issuance of a certified private applicator's license.

> Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statutes.

Laughlin v. Forgrave, 432 S.W.2d 308, 313 (Mo. banc 1968). Following this rule of construction, we conclude that Section 281.040.2 prevails over Section 262.593.3 in this instance.

CONCLUSION

It is the opinion of this office that Section 281.040.2, RSMo Supp. 1991, prohibits the charging of a fee for the course of instruction required for individuals to obtain a certified private applicator's license from the Director of the Department of Agriculture or for educational materials needed to successfully complete the course.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

DEPARTMENT OF PUBLIC SAFETY:
FINANCIAL RESPONSIBILITY
MOTOR VEHICLE LAW:
MOTOR VEHICLE RESPONSIBILITY LAW:
MOTOR VEHICLES:
PEACE OFFICERS:
POLICE:

Section 303.024, RSMo, as amended by Senate Substitute for House Substitute for House Bill No. 1574, 86th General Assembly, Second Regular Session (1992), authorizes a law enforcement officer who lawfully stops an operator of a motor vehicle to notify the Director of Revenue if the operator fails to exhibit an insurance identification card but does not authorize the officer to make an arrest and issue a Uniform Complaint and Summons for failure to exhibit an insurance identification card or failure to maintain financial responsibility.

December 2, 1992

OPINION NO. 161-92

Richard C. Rice, Director
Missouri Department of Public Safety
Post Office Box 749
Jefferson City, Missouri 65102

Dear Director Rice:

This opinion is in response to your question asking:

> Are violations of statutes found in Chapter 303 RSMo., criminal in nature, and if so, may law enforcement officers enforce provisions of 303.024 RSMo., for "failure to display an insurance identification card" and 303.025 RSMo., "failure to maintain financial responsibility" by making arrests and issuing Uniform Complaint and Summonses as authorized in the penalty statute found in 303.370 RSMo.?

Along with your question, you state:

> In performance of duties, law enforcement officers frequently encounter motorists who either fail to maintain financial responsibility (insurance) or fail to display upon demand, an insurance identification card as required in Chapter

> 303 RSMo. When encountering such motorists, officers normally forward a report to the Director of Revenue who will then require the motorist to provide financial responsibility or have their driving privilege suspended until they comply as directed. . . .

Section 303.024, RSMo, as amended by Senate Substitute for House Substitute for House Bill No. 1574, 86th General Assembly, Second Regular Session (1992), sets out requirements for insurance identification cards to be provided by each insurer issuing motor vehicle liability policies in Missouri. Subsection 5[1] provides:

> 303.024. Insurance identification cards issued by insurer, contents--identification cards for self-insured issued by director, contents--exhibition of card to peace officers, failure to exhibit.--
>
> * * *
>
> 5. An insurance identification card shall be carried in the insured motor vehicle at all times. The operator of an insured motor vehicle shall exhibit the insurance identification card on the demand of any peace officer who lawfully stops such operator while that officer is engaged in the performance of the duties of his office. <u>If the operator fails to exhibit an insurance identification card, the officer shall notify the director of revenue, in the manner determined by the director</u>. A motor vehicle liability insurance policy, a motor vehicle liability insurance binder, or receipt which contains the policy information required in subsection 2 of this section, shall be satisfactory evidence of insurance in lieu

[1]The 1992 amendment to Section 303.024 did not change the provisions of subsection 5.

of an insurance identification card. [Emphasis added.]

Section 303.025, RSMo 1986, sets forth the requirement for an owner of a motor vehicle to maintain financial responsibility. Subsections 1 and 2 of Section 303.025 provide:

> 303.025. Duty to maintain financial responsibility, methods.--1. No owner of a motor vehicle registered in this state shall operate the vehicle, or authorize any other person to operate the vehicle, unless the owner maintains the financial responsibility as required in this section. Furthermore, no person shall operate a motor vehicle owned by another with the knowledge that the owner has not maintained financial responsibility unless such person has financial responsibility which covers his operation of the other's vehicle.
>
> 2. A motor vehicle owner shall maintain his financial responsibility in a manner provided for in section 303.160, or with a motor vehicle liability policy which conforms to the requirements of the laws of this state.
>
> * * *

Section 303.026, RSMo 1986, provides:

> 303.026. Director to notify owners who register vehicles, contents--certified statement of financial responsibility required for registration--random samples to be taken for verification.--1. The director shall inform each owner who registers a motor vehicle of the following:
>
> (1) The existence of the requirement that every motor vehicle owner in the state maintain his financial responsibility;
>
> (2) The penalties which apply to violations of the requirement to maintain financial responsibility;

(3) The benefits of maintaining coverages in excess of those which are required;

(4) The director's authority to conduct samples of Missouri motor vehicle owners to insure compliance.

2. No motor vehicle owner shall be issued registration for a vehicle unless the owner, or his authorized agent, signs a statement provided by the director of revenue at the time of registration of the vehicle certifying that such owner has and will maintain, during the period of registration, financial responsibility with respect to each motor vehicle that is owned, licensed or operated on the streets or highways.

3. The director shall annually select for financial responsibility verification, a sample of the motor vehicle registrations or licenses which is statistically significant to determine the number of insured motorists in the state of Missouri, or to insure compliance. The director may utilize a variety of sampling techniques including but not limited to the processing of uniform traffic tickets, point system warning letters, and random surveys of motor vehicle registrations.

4. Upon determination that the information provided by the owner or authorized agent is inaccurate, the director shall notify the owner of the need to provide, within thirty days, information establishing the existence of the required financial responsibility as of the date of such notice. Failure to provide such information shall result in the suspension of all registrations of the owner's motor vehicles failing to meet such requirements, as is provided in section 303.041. [Emphasis added.]

Section 303.041, RSMo 1986, provides for the suspension of the license of the owner or operator and the registrations of

the owner's motor vehicles for failure to maintain financial responsibility. Such section provides in part:

> 303.041. Failure to maintain financial responsibility--suspension of license and registration--notice--failure to surrender license or registration, fee.--1. If the director determines that the operator or owner of a motor vehicle has not maintained the financial responsibility required in section 303.025 as a result of a financial responsibility verification sample as provided for in section 303.026, or as a result of an accident report as required by section 303.040, or either, the director shall thirty-three days after mailing notice to the owner or operator suspend the license of the owner or operator, or both, and all registrations of the owner's motor vehicles failing to meet such requirement. The notice of suspension shall be mailed to the person at the last known address shown on the department's records, and to the address provided by the accident report if that address differs from the address of record. The notice is deemed received three days after mailing. The notice of suspension shall clearly specify the reason and statutory grounds for the suspension and the effective date of the suspension, the right of the person to request a hearing, the procedure for requesting a hearing, and the date by which that request for a hearing must be made.
>
> * * *

In Downs v. Director of Revenue, 791 S.W.2d 851 (Mo. App. 1990), the court of appeals interpreted Section 303.024.5, stating:

> The penalty for failure to produce an insurance card on lawful demand appears to be the possibility that appellant [Director of Revenue] will shortly request proof of insurance; the failure to produce a card is not directly penalized.

Id. 791 S.W.2d at 853 [Court's emphasis]. Similarly, the failure to maintain financial responsibility as required in Section 303.025 is penalized by Section 303.041 through the suspension of the license of the owner or operator and the registrations of the owner's motor vehicles.

Your statement of facts accompanying your question indicates that officers are currently acting in compliance with the provisions of Section 303.024.5 by notifying the Director of Revenue of a driver's failure to exhibit an insurance identification card. This procedure is consistent with the responsibilities of the Director of Revenue set out in Section 303.026.

> Notice to the Director that a person has failed to exhibit an insurance identification card upon demand by an officer acting pursuant to § 303.024.5, RSMo 1986, is a sampling technique under § 303.026.3, RSMo 1986.

Cillo v. Director of Revenue, State of Missouri, 782 S.W.2d 81, 82 (Mo. App. 1989).

Your question refers to a provision in Section 303.370, RSMo 1986, which provides:

> 303.370. Offenses, penalties.--
>
> * * *
>
> 5. Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be fined not more than five hundred dollars or imprisoned not more than ninety days, or both. [Emphasis added.]

Section 303.370.5 applies only where there is no penalty otherwise provided. In this instance, the legislature has provided for a penalty through the provisions of Sections 303.024, 303.026, and 303.041. See Downs v. Director of Revenue, supra. Moreover, in Section 303.024.5 the legislature has expressly set out the course of action to be followed by law enforcement officers. Section 303.370.5 is not applicable.

Richard C. Rice, Director

CONCLUSION

It is the opinion of this office that Section 303.024, RSMo, as amended by Senate Substitute for House Substitute for House Bill No. 1574, 86th General Assembly, Second Regular Session (1992), authorizes a law enforcement officer who lawfully stops an operator of a motor vehicle to notify the Director of Revenue if the operator fails to exhibit an insurance identification card but does not authorize the officer to make an arrest and issue a Uniform Complaint and Summons for failure to exhibit an insurance identification card or failure to maintain financial responsibility.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

DRIVING WHILE INTOXICATED:
JURISDICTION:
JUVENILES:
TRAFFIC OFFENSES:

Pursuant to Section 211.031, RSMo Supp. 1991, a fifteen and one-half year old who operates a motor vehicle in violation of Section 302.020, RSMo Supp. 1991, without a temporary instruction permit as authorized by Section 302.130, RSMo Supp. 1991, is not within the exclusive original jurisdiction of the juvenile court, a fifteen and one-half year old charged with a first offense of driving while intoxicated is not within the exclusive original jurisdiction of the juvenile court, and the exception to the exclusive original jurisdiction of the juvenile court for a fifteen and one-half year old who is alleged to have violated a state or municipal traffic ordinance or regulation is not applicable when the charge is leaving the scene of an accident under such circumstances as to constitute a felony.

December 31, 1992

OPINION NO. 164-92

David A. Baird
Nodaway County Prosecuting Attorney
Nodaway County Courthouse
Maryville, Missouri 64468

Dear Mr. Baird:

This opinion is in response to your questions asking:

> Is a 15½ year old who operates a motor vehicle in violation of state law and who does not have an operator's permit to drive with a parent or guardian to be prosecuted for said violation under the general law or under the juvenile law?
>
> As to the foregoing, does it matter if the violation is a traffic violation (302 - 307, RSMo) or a DWI or a vehicular felony?

Along with your questions, you state:

> The facts are stated in the two questions posed which basically relate to an individual age 15½ who has never applied for a permit, choosing to drive in violation of law and who thereafter receives a citation for a violation of a stop sign statute and also is cited for leaving the scene of a motor vehicle

> accident. The additional question relates to a situation where the person would be cited for DWI or felony leaving the scene.

Section 211.031.1, RSMo Supp. 1991, provides in pertinent part:

> **211.031. Juvenile court to have exclusive jurisdiction, when--exceptions.**--1. Except as otherwise provided herein, the juvenile court shall have exclusive original jurisdiction in proceedings:
>
> * * *
>
> (3) Involving any child who is alleged to have violated a state law or municipal ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior to attaining the age of seventeen years, in which cases jurisdiction may be taken by the court of the circuit in which the child or person resides or may be found or in which the violation is alleged to have occurred; except that, the juvenile court shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony; [Emphasis added.]
>
> * * *

The age reference was changed from a child sixteen years of age to a child fifteen and one-half years of age by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 202 and 364, 86th General Assembly, First Regular Session (1991). House Bills Nos. 202 and 364 also amended Section 302.130, RSMo, which now provides in part:

> **302.130. Issuance of temporary instruction permit, when--duration.**--1. Any person at least fifteen and one-half years of age who, except for age or lack of instruction in operating a motor vehicle, would otherwise be qualified to obtain a license pursuant to sections 302.010 to 302.340 may apply for and the director

> shall issue a temporary instruction permit entitling the applicant, while having such permit in his immediate possession, to drive a motor vehicle of the appropriate class upon the highways for a period of six months, but any such person, except when operating a motorcycle or motortricycle, must be accompanied by a licensed operator for the type of motor vehicle being operated who is actually occupying a seat beside the driver for the purpose of giving instruction in driving the motor vehicle, and in the case of any driver under sixteen years of age, the licensed operator occupying the seat beside the driver shall be a parent or guardian who has a valid driver's license.
>
> 2. The director, upon proper application, in his discretion, may issue a restricted instruction permit effective for a school year or more restricted period to an applicant who is enrolled in a driver training program approved by the state department of elementary and secondary education even though the applicant has not reached the age of sixteen years but has passed the age of fifteen years. Such instruction permit shall entitle the applicant, when he has such permit in his immediate possession, to operate a motor vehicle on the highways, but only when an instructor approved by the state department of elementary and secondary education is occupying a seat beside the driver.
>
> * * *

Section 302.020.1(1), RSMo Supp. 1991, makes it unlawful, unless otherwise provided by law, for any person to "[o]perate any vehicle upon any highway in this state unless he has a valid license." Pursuant to the penalty provision in Section 302.340, RSMo Supp. 1991, a violation of Section 302.020 is a class A misdemeanor. While the temporary instruction permit authorized in Section 302.130 acts as an exception to Section 302.020.1(1), the fifteen and one-half year old described in your question does not have such a permit. As a result, his conduct in operating the motor vehicle would constitute a class A misdemeanor. Pursuant to Section 211.031.1(3), the juvenile court would not have exclusive original jurisdiction of the

fifteen and one-half year old operating a motor vehicle without a temporary instruction permit.

Your questions also concern a fifteen and one-half year old who violates other traffic provisions, the statute prohibiting driving while intoxicated, and the statute making leaving the scene of a motor vehicle accident a felony under certain circumstances. Pursuant to the language of Section 211.031.1(3), the juvenile court does not have exclusive original jurisdiction over a fifteen and one-half year old "who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony."

With regard to driving while intoxicated, this office has addressed similar questions in prior opinions. See Opinion No. 53-88; 112-86; and 181, Limbaugh, 1980; a copy of each is enclosed. The issue is whether a first offense of driving while intoxicated is a violation of "a state or municipal traffic ordinance or regulation." As discussed in the prior opinions, a first offense of driving while intoxicated is included in the phrase "traffic ordinance or regulation." Therefore, pursuant to Section 211.031.1(3), a fifteen and one-half year old charged with a first offense of driving while intoxicated is not within the exclusive original jurisdiction of the juvenile court.

Section 577.060, RSMo Supp. 1991, relates to leaving the scene of an accident. Such section provides in part:

> **577.060. Leaving the scene of a motor vehicle accident.**--1. A person commits the crime of leaving the scene of a motor vehicle accident when being the operator or driver of a vehicle on the highway or on any publicly or privately owned parking lot or parking facility generally open for use by the public and knowing that an injury has been caused to a person or damage has been caused to property, due to his culpability or to accident, he leaves the place of the injury, damage or accident without stopping and giving his name, residence, including city and street number, motor vehicle number and driver's license number, if any, to the injured party or to a police officer, or if no police officer is in the vicinity, then to the nearest police station or judicial officer.
>
> * * *

> 3. Leaving the scene of a motor vehicle accident is a class A misdemeanor, except that it shall be a class D felony if the accident resulted in:
>
> (1) Physical injury to another party; or
>
> (2) Property damage in excess of one thousand dollars; or
>
> (3) If the defendant has previously pled guilty to or been found guilty of a violation of this section.

The factual situation you pose in your question involves a charge of leaving the scene of an accident under such circumstances that the offense charged is a felony. The exception in Section 211.031.1(3) only applies to violations when "the violation . . . does not constitute a felony." Because the question you pose involves a felony, the exception in Section 211.031.1(3) is not applicable.

CONCLUSION

It is the opinion of this office that pursuant to Section 211.031, RSMo Supp. 1991, a fifteen and one-half year old who operates a motor vehicle in violation of Section 302.020, RSMo Supp. 1991, without a temporary instruction permit as authorized by Section 302.130, RSMo Supp. 1991, is not within the exclusive original jurisdiction of the juvenile court, a fifteen and one-half year old charged with a first offense of driving while intoxicated is not within the exclusive original jurisdiction of the juvenile court, and the exception to the exclusive original jurisdiction of the juvenile court for a fifteen and one-half year old who is alleged to have violated a state or municipal traffic ordinance or regulation is not applicable when the charge is leaving the scene of an accident under such circumstances as to constitute a felony.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Enclosures: Opinion No. 181, Limbaugh, 1980
Opinion No. 112-86
Opinion No. 53-88

BOARD OF PUBLIC WORKS:
CITIES, TOWNS AND VILLAGES:
CITY BOARD OF PUBLIC WORKS:
SCHOOLS:
SCHOOL BOARDS:

An election to the school board constitutes the acceptance of "a nomination or appointment for any other office" as the phrase is used in Section 91.470, RSMo 1986.

October 28, 1992

OPINION NO. 167-92

The Honorable Mary C. Kasten
Representative, District 159
State Capitol Building, Room 101B
Jefferson City, Missouri 65101

Dear Representative Kasten:

This opinion is in response to your question asking:

> In state statute 91.470, does the language "accept a nomination or appointment for any other office" include election to a School Board?

Section 91.450, RSMo 1986, authorizes and empowers towns and villages and certain cities to establish by ordinance an executive department known as "The Board of Public Works". The Board of Public Works is

> . . . to consist of four persons, electors of said city, town or village, who have resided therein for a period of two years next before their appointment, who shall be appointed by the mayor of such city, town or village, and confirmed by the common council in such manner as other appointive officers of such city, town or village are appointed and confirmed. The members of such board shall hold office for a term of four years each, or until their successors are appointed and qualified; provided, that the members of said board shall hold office for a term of four years each, except the first incumbents, as members of said board of public works, who shall be appointed and hold office for the term of one, two, three and four years respectively.

The powers and duties of such a board, once established by ordinance, are set out in Sections 91.480 to 91.550, RSMo 1986.

The Honorable Mary C. Kasten

Section 91.470, RSMo 1986, the subject of your question, provides:

> 91.470. Office vacated, how.--Any member of said board of public works, who shall accept a nomination or appointment for any other office during his official term, shall be deemed thereby to have resigned as a member of said board, and his said membership shall thereby be ipso facto vacated. [Emphasis added.]

In construing a statute, legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). Therefore, the prohibition set forth in Section 91.470 must be read to include any office other than member of the Board of Public Works.

> A public office is defined to be "the right, authority, and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public." Mechem, Pub. Off. 1.

State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636, 637 (1896). In State ex rel. Walker v. Bus, supra, it was accepted that a member of a school board was a holder of public office. See also State ex inf McKittrick v. Whittle, 63 S.W.2d 100, 102 (Mo. banc 1933)(holding "a school director is a public officer"). Consequently, we conclude that an election to the school board would constitute the acceptance of "a nomination or appointment for any other office."

CONCLUSION

It is the opinion of this office that an election to the school board constitutes the acceptance of "a nomination or appointment for any other office" as the phrase is used in Section 91.470, RSMo 1986.

Very truly yours

William L. Webster

WILLIAM L. WEBSTER
Attorney General

CIRCUIT BREAKER LAW:
HOMESTEAD:
PROPERTY TAX:
TAXATION - GENERAL:
TAXATION - INCOME TAX:

Pursuant to Section 135.010(1), RSMo, as amended by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1434 & 1490 and Senate Substitute for Senate Bill No. 797, 86th General Assembly, Second Regular Session (1992), veterans of the armed forces of the United States or this state who became one hundred percent disabled as a result of such military service and their spouses are eligible for tax credits provided in Sections 135.010 to 135.030, RSMo, regardless of age.

October 15, 1992

OPINION NO. 169-92

The Honorable Pat Kelley
Representative, District 48
State Capitol Building, Room 116-4
Jefferson City, Missouri 65101

Dear Representative Kelley:

This opinion is in response to your question asking:

> Whether the language in Section 135.010, RSMo, allows a claimant or spouse, regardless of age, who is a veteran of any branch of the armed forces of the United States or this state who becomes disabled as a result of such service to be eligible for a credit pursuant to the provisions of Sections 135.010 to 135.030, RSMo.

Sections 135.010 to 135.030, RSMo, provide for property tax relief for certain persons. Section 135.010, RSMo, as amended by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1434 & 1490 and Senate Substitute for Senate Bill No. 797, 86th General Assembly, Second Regular Session (1992)[1], provides in part:

---

[1]Each of these bills provides an effective date of January 1, 1993 for the amendments to Section 135.010.

135.010. As used in sections 135.010 to 135.030 the following words and terms mean:

(1) "Claimant", a person or persons claiming a credit under sections 135.010 to 135.030. If the persons are eligible to file a joint federal income tax return and reside at the same address at any time during the taxable year, then the credit may only be allowed if claimed on a combined Missouri income tax return or a combined claim return reporting their combined incomes and property taxes. A claimant shall not be allowed a property tax credit unless the claimant or spouse has attained the age of sixty-five on or before the last day of the calendar year and [unless] the claimant or spouse was a resident of Missouri for the entire year or the claimant or spouse is a veteran of any branch of the armed forces of the United States or this state who became one hundred percent disabled as a result of such service. The residency requirement shall be deemed to have been fulfilled for the purpose of determining the eligibility of a surviving spouse for a property tax credit if a person of the age of sixty-five years or older who would have otherwise met the requirements for a property tax credit dies before the last day of the calendar year;

* * *

(4) "Income", Missouri adjusted gross income as defined in section 143.121, RSMo, less two thousand dollars as an exemption for the claimant's spouse residing at the same address, and increased, where necessary, to reflect the following:

(a) Social security, railroad retirement, and veterans payments and benefits unless the claimant is a one hundred percent service-connected, disabled veteran or a spouse of a one hundred percent service-connected, disabled veteran. The one hundred percent

> service-connected disabled, veteran shall not be required to list veterans' payments and benefits;
>
> * * *
>
> [bracketed material deleted; underscored material added by amendment].

In construing a statute, legislative intent should be ascertained from the language used, considering words in their plain and ordinary meaning. Metro Auto Auction v. Director of Revenue, 707 S.W.2d 397, 401 (Mo. banc 1986). When the legislature amends a statute, changing its language, it is presumed to have intended the change to have some effect. Holt v. Burlington Northern Railroad Company, 685 S.W.2d 851, 857 (Mo. App. 1984). The statute must be viewed in the light of the goal or purpose it sought to achieve. State ex rel. Missouri Power & Light Company v. Riley, 546 S.W.2d 792, 796 (Mo. App. 1977).

The added language in Section 135.010(1) and (4)(a) indicates an intent to provide tax relief to veterans who are one hundred percent disabled as a result of military service. At issue is the interpretation of the following sentence:

> A claimant shall not be allowed a property tax credit unless the claimant or spouse has attained the age of sixty-five on or before the last day of the calendar year and the claimant or spouse was a resident of Missouri for the entire year or the claimant or spouse is a veteran of any branch of the armed forces of the United States or this state who became one hundred percent disabled as a result of such service. [Emphasis added.]

The word "or" is ordinarily used as a disjunctive to mean "either." Norberg v. Montgomery, 351 Mo. 180, 173 S.W.2d 387, 390 (1943); Dodd v. Independent Stove & Furnace Co., 330 Mo. 662, 51 S.W.2d 114, 118 (1932). Applying the ordinary definition to the term "or" as used in Section 135.010(1) leads to the conclusion that claimant status is not limited to individuals aged sixty-five or over because the definition includes the provision "or the claimant or spouse is a veteran. . . ."

This conclusion is further supported by the fact the language "or the claimant or spouse is a veteran . . ." was an

addition to the statute. In adding the language the legislature is presumed to have intended the change to have some effect. Since such veterans or spouses if sixty-five or over were entitled to the tax relief before the 1992 amendments, the 1992 amendments to have some effect must have been intended to provide the tax relief to such veterans and spouses regardless of age.

CONCLUSION

It is the opinion of this office that pursuant to Section 135.010(1), RSMo, as amended by Senate Committee Substitute for House Committee Substitute for House Bills Nos. 1434 & 1490 and Senate Substitute for Senate Bill No. 797, 86th General Assembly, Second Regular Session (1992), veterans of the armed forces of the United States or this state who became one hundred percent disabled as a result of such military service and their spouses are eligible for tax credits provided in Sections 135.010 to 135.030, RSMo, regardless of age.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

September 8, 1992

OPINION LETTER NO. 180-92

The Honorable George R. Engelbach
Representative, District 106
State Capitol Building, Room 135BC
Jefferson City, Missouri 65101

Dear Representative Engelbach:

This opinion letter is in response to your question asking:

> Is the form of the petition relating to Section 64.900, RSMo, in substantial compliance with the requirements for petitions as specified in Sections 115.700 and 115.019, RSMo, and can thereby be found as sufficient, disregarding clerical and merely technical errors?

Based on the information we have been provided, we understand your question concerns a petition submitted to the county commission of Jefferson County asking that a proposition concerning the planning and zoning program of the county be submitted to the voters of the county. A copy of the form of petition is attached hereto as Attachment A. Attached hereto as Attachment B is a copy of a certificate of the county clerk regarding the checking of the names on the petition, and attached hereto as Attachment C is a copy of a certificate of the county clerk regarding the number of signatures required. We understand the issue for consideration is whether or not the form of petition is in substantial compliance with the statutory requirements concerning form such that there is no deficiency in form precluding the proposition being placed on the ballot.[1]

---

[1]We have not been asked to address nor do we address any aspects of the submission of the ballot proposition other than

(Footnote Continued)

Section 64.900, RSMo Supp. 1991, provides:

> **64.900. Termination or continuation of county planning, zoning--election.**--1. Upon receipt of a petition signed by a number of voters in the county equal to five percent of the total vote cast in the county at the next preceding election for governor requesting the submission of the question of continuation or termination, the county commission in any county which has adopted a program of county planning, county zoning or county planning and zoning shall make an order to submit to the voters of the county the question to continue or to terminate the program.
>
> 2. The question shall be submitted in substantially the following form:
>
> Shall (county planning, county zoning, or county planning and zoning) be continued?
> ☐ YES ☐ NO
>
> 3. If a majority of those voting on the question vote yes for continuation, the program shall be continued unless and until terminated by a vote of the qualified voters voting thereon; if a majority of those voting on the question vote no for the termination of the program, the county commission shall declare the program terminated and shall discharge any commission appointed thereunder. Any resolution, ordinance or regulation adopted under the program pursuant to the provisions of sections 64.800 to 64.905 shall be void and of no effect from and after the termination of the program as provided in this section.

Section 64.900 does not provide a suggested form of petition.

Section 115.700, RSMo 1986, provides:

(Footnote Continued)
whether the form of petition attached as Attachment A differs so significantly from the form of petition set forth in Section 115.019, RSMo 1986, as to preclude placing the requested proposition on the ballot.

> **115.700. Local issues, petition, form and procedure, when.**--When the form of a petition is not provided by law for local issues, the provisions of section 115.019 shall, as far as possible, govern the form of the petition, but not the date of the election.

Section 115.019, RSMo 1986, to which Section 115.700 refers, provides in part:

> **115.019. Voters may petition to establish a board of election commissioners, procedure--form of petition.--**
>
> * * *
>
> 4. Each petition for the formation of a board of election commissioners shall consist of sheets of uniform size. The space for signatures on either side of a petition page shall be no larger than 8½ X 14 inches, and each page shall contain signatures of registered voters from only one county. Each page of each petition for the formation of a board of election commissioners shall be in substantially the following form:
>
> To the Honorable . . . . . , county clerk of . . . . . County:
> We, the undersigned, citizens and registered voters of . . . . . County, respectfully order that the following question be placed on the official ballot, for acceptance or rejection, at the next general election to be held on the . . . . . day of . . . . . , 19. . .:
> "Should a board of election commissioners be established in . . . . . County to assume responsibility for the registration of voters and the conduct of elections?";
> and each for himself says: I have personally signed this petition; I am a registered voter of the state of Missouri and . . . . . County; my registered voting address and the name of the city, town or village in which I live are correctly written after my name.
> CIRCULATOR'S AFFIDAVIT STATE OF MISSOURI, COUNTY OF ..... I, ..., a Missouri registered voter and a resident of the state of Missouri, being first duly sworn, say (print or type names of signers)

NAME (Signature)	DATE SIGNED	REGISTERED VOTING ADDRESS (Street)(City, Town or Village)	ZIP CODE	CONGR. DIST.	NAME (Printed or typed)
(Here follow numbered lines for signers)					

signed this page of the foregoing petition, and each of them signed his name thereto in my presence; I believe that each has stated his name, registered voting address and city, town or village correctly, and that each signer is a registered voter of the state of Missouri and ..... County.

.....
Signature of Affiant
(Person obtaining signatures)

.....
Address of Affiant

Subscribed and sworn to before me this ... day of ....., A.D. 19...

.....
Signature of Notary

Notary Public (Seal)
My commission expires.....

If this form is followed substantially, it shall be sufficient, disregarding clerical and merely technical errors.

* * *

In determining the validity of a petition, the court in State ex rel. Blackwell v. Travers, 600 S.W.2d 110 (Mo. App. 1980) stated:

> A legislative act allowing people to exercise their democratic right to determine issues must be liberally construed to effectuate the purpose of the act. Liberal construction of provisions which reserve to the people the power of the initiative is particularly favored so as to make effective this

> reservation of power. State ex rel. Voss v. Davis, 418 S.W.2d 163, 166[4] (Mo. 1967). We are also guided by certain recognized canons of construction, among which are: "[T]he naked letter of the law must gently and a little give way to its obvious intendment." Rutter v. Carothers, 223 Mo. 631, 122 S.W. 1056 (1909).
>
> * * *
>
> The initiative is a tool of participatory democracy and its purpose is to allow the electorate to resolve questions where their duly elected representatives failed to act on them or refuse to proceed with a change which the public desires.
>
> * * *

Id., at 113.

While the form of petition submitted to the county commission, Attachment A hereto, differs in some respects from the form of petition set forth in Section 115.019, we do not consider the differences to be of such significance as to preclude placing the requested proposition on the ballot. As stated in State ex rel. Blackwell v. Travers, supra, the legislative act allowing people to exercise their democratic right must be liberally construed to effectuate the purpose of the act. The differences between the form of petition submitted to the county commission and the form of petition set forth in Section 115.019 do not impact the obvious intent of the signers of the petition.

It is the opinion of this office that the form of petition attached hereto as Attachment A does not differ so significantly from the form of petition set forth in Section 115.019, RSMo 1986, as to preclude placing the requested proposition on the ballot.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General

Attachments: A, B and C

PETITION

TO THE HONORABLE COUNTY COURT of JEFFERSON, STATE of MISSOURI:

WE, the undersigned registered voters of the State of Missouri and County of Jefferson in accordance with Section 64-900 R.S. of Missouri 1990 Cumulative Supplement, respectfully demand that the County Court shall submit to the County voters a proposition to terminate or continue the Planning and Zoning Program of the County and the County Clerk shall prepare the ballots.

AND each for himself says: I have personally signed this petition; I am a legal voter of the State of Missouri, in the County of Jefferson; my residence and post office are correctly written after my name.

NAME	RESIDENCE	POST OFFICE

STATE OF MISSOURI
COUNTY OF JEFFERSON } SS.

I, ... being first duly sworn that the above named signed this sheet of the foregoing petition, and each of them signed his or her own name hereto in my presence; I believe that each has stated his or her name, post office address and residence correctly, and that each signer is a legal voter of the State of Missouri and County of Jefferson.

Signed .....

Subscribed and sworn to before me this ..... day of ..... A.D. 19.....

Notary .....

My Commission Expires ..... 19.....

Attachment A

County of JEFFERSON State of Missouri

OFFICE OF
ELEANOR KOCH REHM

JEFFERSON COUNTY COURTHOUSE
HILLSBORO, MO. 63050
(314) 789-5478 / 942-4300

COUNTY CLERK &
ELECTION AUTHORITY

CERTIFICATION

PLANNING & ZONING

I, Eleanor Koch Rehm, County Clerk and Election Authority for the County of Jefferson, State of Missouri, hereby acknowledge the receipt of a petition concerning termination of Planning & Zoning, and consisting of 249 pages, which was forwarded to this office to be checked to determine if the signers of the petition in the county were, at the time of signing, properly registered voters in the County of Jefferson. We further certify that this office has checked names contained on the above-referenced pages and that the following has been found:

1. 4,760 Number of signers found valid
2. 866 Number of invalid due to no record
3. 281 Number of invalid due to wrong address
4. 29 Number of invalid due to printed names and surname incorrect
5. 193 Number of duplicate names
6. 1,369 Total number found invalid (add lines 2, 3, 4, & 5)
7. 6,129 Total number checked (add lines 1 & 6)

This is also to certify that the petition sponsor's name appearing toward the bottom of each page was checked for validity as to their being a registered voter.

Eleanor Koch Rehm
Signature of County Clerk/Elec. Auth.

August 24, 1992
Date signed

County of JEFFERSON State of Missouri

OFFICE OF
ELEANOR KOCH REHM

JEFFERSON COUNTY COURTHOUSE
HILLSBORO, MO. 63050
(314) 789-5478 / 942-4300

COUNTY CLERK &
ELECTION AUTHORITY

August 24, 1992

RE: Planning & Zoning Petition to Terminate
Section 64.900 (Copy attached)

November 8, 1988 Govenors race:

John Ashcroft	35,559
Betty Cooper Hearnes	21,104
Mike Roberts	609
Total Votes Cast	57,272
X (Percentage required)	5%
	2863.6

Total number of signatures required - 2,864

Eleanor Koch Rehm
Eleanor Koch Rehm, County Clerk

Jean M. Gunnett
Jean M. Gunnett, Chief Clerk/Elections

NOTE: Attachment to County Clerk's Certification to County Commission

"VOTE - and the choice is yours."
"DON'T VOTE - and the choice is theirs."
"REGISTER - or you have NO choice."

Attachment C

COUNTIES:
COUNTY DEPOSITORIES:
COUNTY FUNDS:
COUNTY INVESTMENTS:
COUNTY TREASURY:
INVESTMENT OF COUNTY FUNDS:
INVESTMENTS:

A county is not authorized by law to enter into repurchase agreements.

December 2, 1992

OPINION NO. 192-92

The Honorable Norwood Creason
Representative, District 28
State Capitol Building, Room 303A
Jefferson City, Missouri 65101

Dear Representative Creason:

This opinion is in response to your question asking:

> Under the provisions of Article VI, Section 25 of the Constitution of the state of Missouri, may a county enter into a repurchase agreement with a banking company whereby from time to time the parties may enter into transactions in which the bank agrees to transfer to the county securities or financial instruments against the transfer of funds by the county, with a simultaneous agreement by the county to transfer to the bank such securities at a date certain or upon demand, against the transfer of funds by the bank?

The general rule regarding the powers of counties is:

> A county can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; and (3) those essential to the declared objects and purposes of the corporation. Any fair, reasonable doubt concerning the existence of power has been resolved by the courts against the corporation and the power is denied.

American Aberdeen Angus v. Stanton, 762 S.W.2d 501, 503 (Mo. App. 1988), citing Lancaster v. County of Atchison, 352 Mo. 1039, 1044, 180 S.W.2d 706, 708 (banc 1944).

We have reviewed the statutes relating to county funds and find no authorization for a county to enter into a repurchase agreement. In some instances the General Assembly has authorized investment in repurchase agreements. See, e.g., Section 30.260, RSMo Supp. 1991 (state treasurer) and Section 165.051, RSMo, as amended by House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 581, 86th General Assembly, Second Regular Session (1992)(school districts). See also Missouri Attorney General Opinion No. 107-92, a copy of which is enclosed. There is no comparable statutory authority for counties to enter into repurchase agreements.

Because we conclude a county is not statutorily authorized to enter into repurchase agreements, it is not necessary to examine your constitutional question.

CONCLUSION

It is the opinion of this office that a county is not authorized by law to enter into repurchase agreements.

Very truly yours,

WILLIAM L. WEBSTER
Attorney General

Enclosure: Opinion No. 107-92

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

65102

WILLIAM L. WEBSTER
ATTORNEY GENERAL

P.O. Box 899
(314) 751-3321

December 31, 1992

OPINION LETTER NO. 197-92

The Honorable Roy D. Blunt
Secretary of State
State Capitol Building
Jefferson City, Missouri 65101

and

James R. Moody
Commissioner of Administration
State Capitol Building, Room 125
Jefferson City, Missouri 65101

Dear Secretary Blunt and Commissioner Moody:

Each of you has requested an opinion of this office in response to questions concerning the Missouri Ethics Commission. The questions posed by Secretary Blunt are:

> 1. Since the Missouri Ethics Commission will have no members on January 1, 1993, can said Commission perform the duties and responsibilities assigned to said Commission with respect to [Chapter] 105 and [Chapter] 130, RSMo (1991)?
>
> 2. Since the Missouri Ethics Commission will have no members on January 1, 1993, does the Secretary of State have any responsibility and/or obligation to turn over reports previously filed with the Secretary of State to said Commission as set forth in Section 105.955.12, RSMo (1991)?
>
> 3. Where are the reports, required under [Chapter] 105 and [Chapter] 130 RSMo, to be filed as of January 1, 1993, since

the Missouri Ethics Commission does not yet have any members?

The questions posed by Commissioner Moody are:

1. Are the staff of the Campaign [Finance] Review Board transferred to the Missouri Ethics Commission as of January 1, 1993, even if the commissioners have not been appointed on that date?

2. Are the campaign reporting staff housed in the Secretary of State's office to be transferred to the Missouri Ethics Commission, and if so, what is the effective date of that transfer?

3. If no commissioners are appointed as of January 1, 1993, and therefore, no administrative secretary of the Commission has been appointed to handle the operations of the Commission, who, if anyone, has authority to authorize expenditures on behalf of the Commission beginning January 1, 1993?

Section 105.955, RSMo Supp. 1991, as enacted by Conference Committee Substitute for House Committee Substitute for Senate Committee Substitute for Senate Bill No. 262, 86th General Assembly, First Regular Session (1991), establishes the "Missouri Ethics Commission" (hereinafter referred to as the "Commission"). Section 105.955.1 explains the procedure for appointment of six members of the Commission:

105.955. Ethics commission established--appointment--qualifications--terms--vacancies--removal--restrictions--compensation--administrative secretary--filings required--investigators--powers and duties of commission--advisory opinions--audits.--1. A bipartisan "Missouri Ethics Commission", composed of six members, is hereby established. The commission shall be assigned to the office of administration with supervision by the office of administration only for budgeting and reporting as provided by subdivisions (4) and (5) of subsection 6 of section 1 of the Reorganization Act of 1974. Supervision by

> the office of administration shall not extend to matters relating to policies, regulative functions or appeals from decisions of the commission, and the commissioner of administration, any employee of the office of administration, or the governor, either directly or indirectly, shall not participate or interfere with the activities of the commission in any manner not specifically provided by law and shall not in any manner interfere with the budget request of or withhold any moneys appropriated to the commission by the general assembly. All members of the commission shall be appointed by the governor with the advice and consent of the senate from lists submitted pursuant to this section. Each congressional district committee of the political parties having the two highest number of votes cast for their candidate for governor at the last gubernatorial election shall submit two names of eligible nominees for membership on the commission to the governor, and the governor shall select six members from such nominees to serve on the commission. [Emphasis added.]

Several statutory provisions set out the responsibilities of the Commission. Section 105.955.11 provides:

> 11. The commission shall appoint an administrative secretary who shall serve subject to the supervision of and the pleasure of the commission, but in no event for more than six years. The administrative secretary shall be responsible for the administrative operations of the commission and perform such other duties as may be delegated or assigned to him by law or by rule of the commission. The administrative secretary shall employ staff and retain such contract services as he deems necessary, within the limits authorized by appropriations by the general assembly. [Emphasis added.]

Section 105.955.12 provides:

> 12. Beginning on January 1, 1993, all lobbyist registration and expenditure reports filed pursuant to section 105.470, financial interest statements filed pursuant to subdivision (1) of section 105.489, and campaign finance disclosure reports filed other than with election authorities or local election authorities as provided by section 130.026, RSMo, shall be filed with the commission. All such reports and statements filed prior to that date with the secretary of state and clerk of the house of representatives and secretary of the senate shall be transferred to the commission.

Section 105.955.13 provides that "[w]ithin sixty days of the initial meeting of the first commission appointed," the commission shall obtain a list of retired appellate and circuit court judges and determine those who wish to serve as special investigators. Section 105.955.14 lists additional duties of the Commission:

> 14. The commission shall have the following duties and responsibilities relevant to the impartial and effective enforcement of sections 105.450 to 105.498 and chapter 130, RSMo, as provided in sections 105.955 to 105.963:
>
> (1) Receive and review complaints regarding alleged violation of sections 105.450 to 105.498 and chapter 130, RSMo, conduct initial reviews and investigations regarding such complaints as provided herein; refer complaints to appropriate prosecuting authorities and appropriate disciplinary authorities along with recommendations for sanctions; and initiate judicial proceedings as allowed by sections 105.955 to 105.963;
>
> (2) Review and audit any reports and statements required by the campaign finance disclosure laws contained in chapter 130, RSMo, and financial interest disclosure laws or lobbyist registration and reporting laws as provided by sections 105.470 to 105.492, for timeliness, accuracy and

completeness of content as provided in sections 105.955 to 105.963;

(3) Develop appropriate systems to file and maintain an index of all such reports and statements to facilitate public access to such information, except as may be limited by confidentiality requirements otherwise provided by law, including cross-checking of information contained in such statements and reports. The commission may enter into contracts with the appropriate filing officers to effectuate such system. Such filing officers shall cooperate as necessary with the commission as reasonable and necessary to effectuate such purpose;

(4) Provide information and assistance to lobbyists, elected and appointed officials, and employees of the state and political subdivisions in carrying out the provisions of sections 105.450 to 105.498 and chapter 130, RSMo;

(5) Make recommendations to the governor and general assembly or any state agency on the need for further legislation with respect to the ethical conduct of public officials and employees and to advise state and local government in the development of local government codes of ethics and methods of disclosing conflicts of interest as the commission may deem appropriate to promote high ethical standards among all elected and appointed officials or employees of the state or any political subdivision thereof and lobbyists;

(6) Render advisory opinions as provided by this section;

(7) Promulgate rules relating to its internal procedures necessary for the efficient administration of the provisions of sections 105.955 to 105.963. All rules and regulations issued by the commission shall be prospective only in operation;

> (8) Request and receive from the officials and entities identified in subdivision (6) of section 105.450 designations of decision-making public servants.

Sections 105.957 through 105.961, RSMo Supp. 1991, establish procedures for the receipt, investigation and review of complaints of alleged violations of the provisions of Chapters 105 and 130, RSMo, and other provisions relating to conduct of public officials or employees.

Section 105.963, RSMo Supp. 1991, provides for the assessment by the administrative secretary of late filing fees in certain circumstances. Such section provides in part:

> 5. The administrative secretary of the Missouri ethics commission shall collect such late filing fees as are provided for in this section. Unpaid late filing fees shall be collected by action filed by the commission. All late filing fees collected pursuant to this section shall be transmitted to the state treasurer and deposited to the general revenue fund.
>
> * * *
>
> 7. This section shall become effective January 1, 1993.

Section 105.470, RSMo Supp. 1991, provides in part:

> 105.470. Definitions--duties of lobbyist--report required, contents--exceptions--penalties.--
>
> * * *
>
> 2. Each lobbyist shall, not later than five days after beginning any activities as an executive lobbyist or a legislative lobbyist, file standardized registration forms, verified by a written declaration that it is made under the penalties of perjury, with the commission. . . .
>
> * * *

> 4. (1) During any period of time in which a lobbyist continues to act as an executive lobbyist or a legislative lobbyist, he shall file with the commission on standardized forms prescribed by the commission reports which shall cover the following dates:
>
> (a) A report covering the period of January first to June thirtieth, which shall be filed on or before July fifteenth;
>
> (b) A report covering the period of July first to December thirty-first, which shall be filed on or before January fifteenth of the following year.
>
> * * *
>
> 13. The chief clerk of the house of representatives and the secretary of the senate shall fulfill the duties under this section of the Missouri ethics commission and its administrative secretary until January 1, 1993. [Emphasis added.]

Section 105.489, RSMo Supp. 1991, provides in part:

> 105.489. Financial interest statements--to be kept with filing officer.--The financial interest statements required to be filed pursuant to the provisions of sections 105.483 to 105.492, other than pursuant to subsection 4 of section 105.485, shall be filed with the appropriate filing officer or officers. For the purpose of sections 105.483 to 105.492, the term "filing officer" is defined as:
>
> (1) In the case of state elected officials and candidates for such office, and all other state officials and employees, the filing officer is the commission;
>
> * * *

> (3) In the case of persons holding elective office in any political subdivision and candidates for such offices, and in the case of all other officers or employees of a political subdivision, the filing officer shall be the commission.

Section 105.491, RSMo Supp. 1991, provides in part:

> 105.491. Administrative secretary of commission--duties.--
>
> * * *
>
> 3. The secretary of state shall fulfill the duties of the commission as provided in sections 105.483 to 105.492 until January 1, 1993. [Emphasis added.]

Section 130.026, RSMo Supp. 1991, provides that for certain committees and candidates, the Commission shall be the "appropriate officer" with whom required reports are to be filed. Section 130.056, RSMo Supp. 1991, sets out the duties of the administrative secretary of the Commission under Chapter 130, RSMo. Section 130.056.3 provides:

> 3. The secretary of state shall fulfill the duties of the Missouri ethics commission and its administrative secretary as provided by sections 130.011, 130.016, 130.026, 130.051 and 130.086, until January 1, 1993. [Emphasis added.]
>
> * * *

Section 130.061, RSMo Supp. 1991 provides in part:

> 130.061. Campaign finance review board--appointment--composition--organization--compensation--termination and expiration.--
>
> * * *
>
> 8. The campaign finance review board shall cease to exist and terminate all operations on and after January 1, 1993. All papers filed and documents held by the

> board on that date and all personnel of the board, shall be transferred to the Missouri ethics commission. This section shall expire and be of no force and effect after January 1, 1993. [Emphasis added.]

We first address the questions posed by Commissioner Moody. The first question of Commissioner Moody asks if the staff of the Campaign Finance Review Board is transferred to the Missouri Ethics Commission as of January 1, 1993, even if the commissioners have not been appointed on that date. When construing statutory language, the primary rule is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. State ex rel. Osborne v. Goeke, 806 S.W.2d 670, 672 (Mo. banc 1991). Section 130.061, quoted above, specifically provides for "all personnel" of the Campaign Finance Review Board to be transferred to the Missouri Ethics Commission on January 1, 1993. Section 105.955.1, quoted above, assigns the Missouri Ethics Commission to the Office of Administration for certain budgeting and reporting purposes. Conference Committee Substitute for House Bill No. 1005, 86th General Assembly, Second Regular Session (1992) provides an appropriation to the Office of Administration for the Missouri Ethics Commission for "Personal Service" and for "Expense and Equipment." Based on the foregoing statutes, we conclude the staff of the Campaign Finance Review Board is transferred to the Missouri Ethics Commission as of January 1, 1993, even though no commissioners have been appointed. An appropriation to the Office of Administration is available to pay such staff and such staff is under the Office of Administration for certain budgeting and reporting purposes.

The second question of Commissioner Moody asks if the campaign reporting staff housed in the Secretary of State's Office is to be transferred to the Missouri Ethics Commission. There is no statutory authority for such transfer comparable to Section 130.061 which authorizes such transfer for personnel of the Campaign Finance Review Board. In the absence of such statutory authority, we conclude no such transfer is authorized.

The final question posed by Commissioner Moody asks who, if anyone, has authority to authorize expenditures on behalf of the Commission beginning January 1, 1993 since no commissioners have been appointed and no administrative secretary appointed. Pursuant to Section 105.955.1, the Missouri Ethics Commission is assigned to the Office of Administration for certain budgeting and reporting purposes. As discussed previously, personnel is transferred to the Commission as of January 1, 1993 under the

authority of Section 130.061. We presume the expenditures to which the question relates are expenditures for personnel services for the staff transferred to the Commission by Section 130.061 and possibly expenses for "expense and equipment" associated with such staff. Because Section 105.955.1 assigns the Commission to the Office of Administration for certain budgeting and reporting purposes, until such time as the Missouri Ethics Commission has members, we conclude the Office of Administration is the appropriate authority to authorize expenditures for the staff transferred to the Commission by statute and for "expense and equipment" associated with such staff.

The first question posed by Secretary Blunt asks about the performance of duties and responsibilities assigned to the Commission since the Commission will have no members on January 1, 1993. Most of the duties and responsibilities assigned to the Commission cannot be performed when the Commission has no members. Because the administrative secretary is appointed by the Commission pursuant to Section 105.955.11, no administrative secretary can be appointed when the Commission has no members. Section 105.955.11 provides for the administrative secretary to employ staff. In the absence of members of the Commission and an administrative secretary, there is no authority to employ staff other than the staff transferred to the Commission under authority of Section 130.061. Likewise, those duties and responsibilities which involve decision-making by the Commission or the administrative secretary cannot be performed in the absence of members of the Commission and an administrative secretary. For example, when the Commission has no members, there is no authority to conduct initial reviews and investigations regarding complaints and refer complaints to appropriate prosecuting authorities and appropriate disciplinary authorities along with recommendations for sanctions (Section 105.955.14(1)); enter into contracts with filing officers to effectuate a filing system (Section 105.955.14(3)); make recommendations to the governor and general assembly or any state agency on the need for further legislation (Section 105.955.14(5)); render advisory opinions (Section 105.955.14(6)); promulgate rules (Section 105.955.14(7)); investigate complaints and take action in response (Sections 105.957 to 105.961); and access late filing fees (Section 105.963). The first question posed by Secretary Blunt does not indicate the specific duties and responsibilities to be addressed. The foregoing examples are examples only and are not intended as a complete listing of all duties and responsibilities which cannot be performed when the Commission has no members.

The second and third questions posed by Secretary Blunt concern turning over reports to the Commission and filing reports with the Commission. As previously discussed, staff is transferred to the Commission as of January 1, 1993 pursuant to Section 130.061. The ministerial function of receiving reports to be filed with the Commission after January 1, 1993 can be performed by such staff. Section 105.955.12 provides for certain reports to be filed with the Commission beginning January 1, 1993. Such section further provides for such reports filed prior to that date with the Secretary of State, Clerk of the House of Representatives, and Secretary of the Senate to be transferred to the Commission. See also Section 105.470.13 (terminating January 1, 1993 the authority of the Chief Clerk of the House of Representatives and Secretary of the Senate to receive certain reports), Section 105.491.3 (terminating January 1, 1993 certain duties of the Secretary of State), Section 130.056.3 (terminating January 1, 1993 certain duties of the Secretary of State), and Section 130.061.8 (terminating January 1, 1993 the Campaign Finance Review Board). Staff is available as a result of the transfer of staff authorized by Section 130.061 to receive reports and the receipt of reports does not involve decisions to be made by either the Commission or administrative secretary. Therefore, we conclude that reports to be filed with or transferred to the Commission on or after January 1, 1993 can be received by the staff transferred to the Commission by Section 130.061.

Very truly yours,

William L. Webster

WILLIAM L. WEBSTER
Attorney General